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1 February 13, 2024 8:31 a.m.

08:31AM 2 THE CLERK: Criminal Number 19-00099-DKW-KJM, United
08:31AM 3 States of America versus Michael J. Miske, Jr.

08:31AM 4 This case has been called for jury trial, day 19.

08:32AM 5 Counsel, please make your appearances for the record.

08:32AM 6 MR. INCIONG: Good morning, Your Honor. Mark Inciong,
08:32AM 7 Michael Nammar, and KeAupuni Akina for the United States. Kari
08:32AM 8 Sherman and FBI Special Agent Thomas Palmer are present.

08:32AM 9 THE COURT: Good morning.

08:32AM 10 MR. KENNEDY: Good morning, Your Honor. Michael
08:32AM 11 Kennedy here with Lynn Panagakos, Michael Miske, Ashley King,
08:32AM 12 and Josh Barry. Good morning.

08:32AM 13 THE COURT: Good morning to all of you as well. You
08:32AM 14 may be seated.

08:32AM 15 Good morning to our 17-person jury. February 13th.
08:32AM 16 Yesterday when we adjourned, Ms. Tufele was on the stand.
08:32AM 17 Ms. Panagakos was in the midst of her cross-examination. So we
08:32AM 18 will resume where we left off.

08:32AM 19 Ms. Panagakos, when you are ready.

08:32AM 20 MS. PANAGAKOS: Thank you, Your Honor.

08:32AM 21 SARA TUFELE,

08:32AM 22 (Having been previously sworn, resumed the stand.)

08:32AM 23 RESUMED CROSS-EXAMINATION

08:32AM 24 BY MS. PANAGAKOS:

08:32AM 25 Q Good morning, Ms. Tufele.

08:32AM 1 A Good morning.

08:32AM 2 MS. PANAGAKOS: I'd like to start by showing you

08:32AM 3 Exhibit 1-860, which was admitted during your direct testimony

08:33AM 4 yesterday, and I'd like to publish that to the jury.

08:33AM 5 THE COURT: Go ahead.

08:33AM 6 MR. KENNEDY: It appears, Your Honor, that our network

08:33AM 7 is down.

08:33AM 8 THE COURT: There you go.

08:33AM 9 BY MS. PANAGAKOS:

08:33AM 10 Q And Ms. Tufele, I believe you testified that this is a

08:33AM 11 photograph of a GPS that you found in your trunk after

08:33AM 12 Mr. Miller was arrested?

08:33AM 13 A Yes.

08:33AM 14 Q And you gave that to the FBI?

08:33AM 15 A Yes.

08:33AM 16 MS. PANAGAKOS: I'd now like to show you Exhibit 1-2.

08:33AM 17 I'd like to display those side by side. 1-2 has also been

08:33AM 18 admitted and I would like to publish these side by side.

08:33AM 19 THE COURT: All right. Go ahead.

08:33AM 20 BY MS. PANAGAKOS:

08:33AM 21 Q Ms. Tufele, can you look at those two photographs, 1-2 and

08:34AM 22 1-860?

08:34AM 23 Can we -- are you able to enlarge them both at the

08:34AM 24 same time?

08:34AM 25 Can you see that these are photographs of the same

08:34AM 1 GPS?

08:34AM 2 A Yes.

08:34AM 3 Q The same model number?

08:34AM 4 A Yes.

08:34AM 5 Q The same IMEI number, 860599001851450?

08:34AM 6 A Yes.

08:34AM 7 Q The same FCC ID number?

08:34AM 8 A Yes.

08:34AM 9 Q So if Mr. Miller testified about Exhibit 1-2 during his

08:34AM 10 testimony, he would have been testifying about the GPS that had

08:34AM 11 been in your trunk?

08:34AM 12 MR. NAMMAR: Objection; calls for speculation.

08:34AM 13 THE COURT: Sustained.

08:34AM 14 BY MS. PANAGAKOS:

08:35AM 15 Q Since Exhibit 1-2 is a photograph of the same GPS as 1-60,

08:35AM 16 can you identify Exhibit 1-2 as a photograph of the GPS that

08:35AM 17 you found in the trunk of your car?

08:35AM 18 A Yes.

08:35AM 19 Q I'd now like to display -- take down 1-60 and display 1-10

08:35AM 20 side by side.

08:35AM 21 MS. PANAGAKOS: 1-10 has also been admitted, and I

08:35AM 22 would like to publish.

08:35AM 23 THE COURT: Go ahead.

08:35AM 24 BY MS. PANAGAKOS:

08:35AM 25 Q And you see, Ms. Tufele, this is an email from GPS track

08:35AM 1 support identifying the user as sleanio@yahoo.com?

08:35AM 2 A Yes.

08:35AM 3 Q Are you aware that SLeanio is Sheena, Mr. Miller's cousin?

08:35AM 4 A No.

08:35AM 5 Q I would like to move on to Exhibit 9051-036, which was

08:36AM 6 admitted yesterday and published. And can we enlarge the

08:36AM 7 body -- thank you, Ms. King.

08:36AM 8 So this is a text between you, Mai, and Mr. Miller,

08:36AM 9 correct?

08:36AM 10 A Yes.

08:36AM 11 Q And these texts show that on October 6, 2017, you're

08:36AM 12 telling Mr. Miller that Sheena needs to get a hold of him?

08:36AM 13 A Yes.

08:36AM 14 Q And Sheena, that's Mr. Miller's cousin?

08:36AM 15 A Yes.

08:36AM 16 Q And she worked at Kama'aina Termite?

08:36AM 17 A Yes.

08:36AM 18 Q And you do know -- I mean, you were friends with Mr. Miske

08:36AM 19 and others, and you testified yesterday about different people

08:36AM 20 that worked at Kama'aina Termite.

08:36AM 21 A Yes.

08:36AM 22 Q So you're familiar with the number of people who worked

08:36AM 23 there?

08:36AM 24 A Correct.

08:36AM 25 Q And you are aware that Mr. Miller worked there in 2013 and

08:36AM 1 2014?

08:36AM 2 A Yes.

08:36AM 3 MR. KENNEDY: Counsel, did you want to publish this?

08:36AM 4 MS. PANAGAKOS: Yes. May I publish?

08:37AM 5 THE COURT: You may. It's been admitted.

08:37AM 6 BY MS. PANAGAKOS:

08:37AM 7 Q Thank you.

08:37AM 8 So you're telling him, Mr. Miller, on October 6th,
08:37AM 9 that Sheena needs to get a hold of him. And you see he sent --
08:37AM 10 he responds first to your first text by saying, K?

08:37AM 11 A Yes.

08:37AM 12 Q And then you text him again three hours later and you tell
08:37AM 13 him again, Sheena needs to get a hold of you?

08:37AM 14 A Yes.

08:37AM 15 Q And you are telling him again because he had not responded
08:37AM 16 by getting a hold of Sheena in response to your first text,
08:37AM 17 right?

08:37AM 18 A Yes.

08:37AM 19 Q Okay. And then a couple of weeks go by and it's now
08:37AM 20 October 29th, and you say, "Why haven't you paid Sheena back
08:37AM 21 yet \$250?"

08:37AM 22 A Yes.

08:37AM 23 Q So he owed Sheena money during the month of October 2017?

08:37AM 24 A I can't remember this exact, but it appears that he did.

08:37AM 25 Q And you acknowledge -- you are telling him that -- you're

08:37AM 1 asking him why he hasn't paid her back?

08:37AM 2 A Yes.

08:38AM 3 Q And then again on October 30th, you say, "Did you pay

08:38AM 4 Sheens yet?"

08:38AM 5 A Yes.

08:38AM 6 Q And then he tells you he is going to stop by the shop and

08:38AM 7 give it to her on Wednesday. He says that on October 30th.

08:38AM 8 Do you see that?

08:38AM 9 A Yes.

08:38AM 10 Q And then on November 1st, you respond -- you remind him

08:38AM 11 again, "Make sure you pay Sheena today. She needs the money."

08:38AM 12 A Yes.

08:38AM 13 Q Do you know if this was for a GPS?

08:38AM 14 A I don't recall what it was for.

08:38AM 15 Q But she was reaching out to you to get a hold of him to

08:38AM 16 get paid?

08:38AM 17 A Yes, correct.

08:38AM 18 Q Because that's what was going on with Mr. Miller at that

08:38AM 19 time, right? He was ducking people?

08:38AM 20 A Yes. A lot of people reached out to me to communicate to

08:38AM 21 Wayne for whatever reason.

08:38AM 22 Q Because he was on drugs and not easy to reach and talk to

08:38AM 23 about money.

08:38AM 24 You testified that -- yesterday that Mr. Miller and

08:38AM 25 Mr. Miske were close friends?

08:38AM 1 A Yes.

08:38AM 2 Q And you are aware that Mr. Miller's drug addiction put a
08:39AM 3 strain on that relationship?

08:39AM 4 A Yes.

08:39AM 5 Q And he started ducking Mike about matters of money as
08:39AM 6 well?

08:39AM 7 A Yes.

08:39AM 8 Q And you are aware by the end of September, Mr. Miske was
08:39AM 9 basically done with Mr. Miller, right?

08:39AM 10 A I can't make certain of that, but their relationship was
08:39AM 11 strained.

08:39AM 12 Q And on September 30, 2017, you actually texted Mr. Miller
08:39AM 13 about being past due on some loans, and among other things, you
08:39AM 14 told him M was done with him, right?

08:39AM 15 A Yes.

08:39AM 16 Q And I'd like to show the witness Exhibit 9051-39, which is
08:39AM 17 on our eighth supplemental list.

08:39AM 18 THE COURT: All right.

08:39AM 19 BY MS. PANAGAKOS:

08:39AM 20 Q And can we enlarge for Ms. Tufele the bottom portion of
08:40AM 21 this page one.

08:40AM 22 You see there, Ms. Tufele, that you're telling
08:40AM 23 Mr. Miller that he is past due on his loans?

08:40AM 24 A Yes.

08:40AM 25 Q And --

08:40AM 1 MR. NAMMAR: Objection to her reading from the
08:40AM 2 exhibit.

08:40AM 3 THE COURT: I'm not sure what this exhibit is. Get
08:40AM 4 some foundation please.

08:40AM 5 BY MS. PANAGAKOS:

08:40AM 6 Q It's by stipulation. It comes from the -- one of the
08:40AM 7 phones seized from Mr. Miller. And Ms. Tufele, if you could
08:40AM 8 see the whole -- can we scroll through the entire document for
08:40AM 9 Ms. Tufele, please.

08:40AM 10 Do you see at the top from -- and you recognize your
08:40AM 11 phone number and your name, Mai?

08:40AM 12 A Yes.

08:40AM 13 Q That was how he identified you in his phone, right?

08:40AM 14 A Yes.

08:40AM 15 Q And so you see that this is a text from you on
08:40AM 16 September 30, 2017?

08:40AM 17 A Yes.

08:40AM 18 Q And then can we go to next bubble.

08:40AM 19 Do you see also that that's another text from you on
08:40AM 20 September 30, 2017?

08:40AM 21 A Yes.

08:40AM 22 Q And you're telling him he is past due on his loans, right?

08:41AM 23 MR. NAMMAR: Objection to her reading from the
08:41AM 24 exhibit.

08:41AM 25 THE COURT: Sustained.

08:41AM 1 BY MS. PANAGAKOS:

08:41AM 2 Q And can you identify the next page page two of this
08:41AM 3 document.

08:41AM 4 Are these more messages from you to Mr. Miller?

08:41AM 5 A Yes.

08:41AM 6 Q And then can we look page three of this document.

08:41AM 7 And is this a copy of a loan that Mr. Miller was past
08:41AM 8 due on?

08:41AM 9 A Yes.

08:41AM 10 Q And you had received a copy of this because the mail was
08:41AM 11 coming to the place where you both had lived together?

08:41AM 12 A Yes.

08:41AM 13 Q And then can we look at page four of this document.

08:41AM 14 And do you recognize this as a copy of a bank
08:41AM 15 statement where he had a negative balance?

08:41AM 16 A Yes.

08:41AM 17 Q And so this is an example of something you testified about
08:42AM 18 yesterday, about you were experiencing his addiction, his
08:42AM 19 symptoms of addiction through being past due on his loans?

08:42AM 20 A Yes.

08:42AM 21 Q Delinquent. And does this refresh your recollection as to
08:42AM 22 whether on September 30th you told Mr. Miller M is done with
08:42AM 23 you?

08:42AM 24 A I don't recall the exact time or conversation, but it
08:42AM 25 sounds like something that could have been said.

08:42AM 1 Q Can we turn to page one and show the witness the first
08:42AM 2 bubble. And can we highlight the third line from the bottom.

08:42AM 3 A Okay. I see what you're --

08:42AM 4 Q You see that? And M -- you see, you wrote to Mr. Miller
08:42AM 5 on September --

08:42AM 6 MR. NAMMAR: Objection to her reading from the
08:42AM 7 exhibit.

08:42AM 8 THE COURT: Are you going to offer this?

08:42AM 9 MS. PANAGAKOS: I would move to admit this into
08:42AM 10 evidence, Your Honor.

08:42AM 11 THE COURT: Mr. Nammar, any objection?

08:42AM 12 MR. NAMMAR: It's hearsay and it's improper
08:43AM 13 impeachment on a collateral matter. She's admitted as much to
08:43AM 14 the substance of this case.

08:43AM 15 MS. PANAGAKOS: The loan statements are business
08:43AM 16 records.

08:43AM 17 THE COURT: The objection is overruled. 9051-39 is
08:43AM 18 admitted and you may publish.

08:43AM 19 (Exhibit 9051-39 was received in evidence.)

08:43AM 20 BY MS. PANAGAKOS:

08:43AM 21 Q Thank you. I would like to publish to the jury.

08:43AM 22 So you do remember -- this refreshes your
08:43AM 23 recollection, right, Ms. Tufele, that on September 30th, you
08:43AM 24 informed Mr. Miller that M was done with him?

08:43AM 25 A Yes.

08:43AM 1 Q And M is Michael Miske?

08:43AM 2 A Yes.

08:43AM 3 Q And you remained friends with him, right?

08:43AM 4 A Yes.

08:43AM 5 Q And that's why he reached out to you to contact -- to get
08:43AM 6 messages to Mr. Miller?

08:43AM 7 A Yes.

08:43AM 8 Q Particularly about things -- well, in this instance,
08:43AM 9 you're just telling Wayne he is delinquent on his bills.

08:43AM 10 But you do recall that the bill on page three of this
08:43AM 11 document, that's -- that \$927.63 that's past due, that's for a
08:44AM 12 payment on a Dually truck, right?

08:44AM 13 A Yes.

08:44AM 14 Q And that was a truck that Mr. Miller had first bought from
08:44AM 15 Mr. Miske?

08:44AM 16 A My understanding is Wayne purchased it and then was unable
08:44AM 17 to pay for it, and then turned it over to Mike.

08:44AM 18 Q And then Mike was making the loan payments?

08:44AM 19 A Yes.

08:44AM 20 Q Mike got the truck and he was making the loan payments?

08:44AM 21 A Yes.

08:44AM 22 Q And Mr. Miller at some point stopped using the money that
08:44AM 23 Mike was providing to make the loan payments for that purpose,
08:44AM 24 right?

08:44AM 25 A I don't know what their transactions were.

08:44AM 1 Q Okay. Can we go back to page one of this exhibit and
08:44AM 2 enlarge the first bubble.
08:44AM 3 And so on September 30, 2017, this is how you felt?
08:45AM 4 A Yes.
08:45AM 5 Q You were having a hard time sleeping, thinking about what
08:45AM 6 your lives had come to.
08:45AM 7 Your lives had been good before Mr. Miller's oxycodone
08:45AM 8 addiction, right? You had planned to marry him actually,
08:45AM 9 right?
08:45AM 10 A Yes.
08:45AM 11 Q And you had good relationships -- very good friendship
08:45AM 12 with Mr. Miske and Heather, right, and Delia and Nila and the
08:45AM 13 rest of their family. You did before this time have a good
08:45AM 14 relationship --
08:45AM 15 A I answered yes to all of these questions. Why are you
08:45AM 16 continuing on the same message?
08:45AM 17 Q So at this point you had no money?
08:45AM 18 A Yes, he was on drugs. Yes, I told him Mike was done with
08:45AM 19 him. Yes, Mike was paying the loan. Can we move on, please?
08:45AM 20 This is not a time in my life that I want to remember.
08:45AM 21 Q So Mr. Miller had a gambling problem at the time?
08:46AM 22 A Everything in the statement I wrote and I meant at the
08:46AM 23 time, yes.
08:46AM 24 Q And so this was on September 30, 2017, and you had not
08:46AM 25 even -- didn't even known where he had been for a couple of

08:46AM 1 weeks, right?

08:46AM 2 A Yes.

08:46AM 3 Q And you weren't even able to have a simple conversation
08:46AM 4 with him at this point in time?

08:46AM 5 A Yes.

08:46AM 6 Q Okay. We can take that exhibit down, Ms. King.

08:46AM 7 Also during this time, he wasn't only not paying his
08:46AM 8 bills -- Wayne, that is, he was also draining your bank
08:46AM 9 account, right?

08:46AM 10 A Not necessarily. I had my own money as I worked myself.

08:47AM 11 And he just couldn't pay for the things he said he was going to
08:47AM 12 pay for.

08:47AM 13 Q So you kept your money separate?

08:47AM 14 A Yes.

08:47AM 15 Q But he just was supposed to be making contributions to
08:47AM 16 bills?

08:47AM 17 A Upbringing, yes.

08:47AM 18 Q Mortgage and contribute to the home?

08:47AM 19 A Yes.

08:47AM 20 Q And he failed?

08:47AM 21 A Yes.

08:47AM 22 Q I'd like to show Ms. Tufele Exhibit 9051-31. Can you read
08:47AM 23 the first page and then let us know when you are done and we
08:47AM 24 can move on to the second page.

08:48AM 25 A Okay.

08:48AM 1 Q Okay. So can we go back to the first page now.

08:48AM 2 And you recognize this as a text between you and

08:48AM 3 Mr. Miller?

08:48AM 4 A Yes.

08:48AM 5 Q And the image in the first item on this report --

08:48AM 6 extraction report of text messages, you are forwarding him a

08:48AM 7 screenshot of what appears on the second page of this exhibit,

08:48AM 8 right?

08:48AM 9 A Yes.

08:48AM 10 Q And so the second page of this exhibit is a text you

08:48AM 11 received from Mike Miske, right?

08:48AM 12 A Yes.

08:48AM 13 Q And is this about the same thing, the car payments?

08:49AM 14 A Yes.

08:49AM 15 Q And he is asking you to get access?

08:49AM 16 MR. NAMMAR: Objection to her saying what the

08:49AM 17 defendant says. As enumerated in our trial brief on page ten,

08:49AM 18 this is hearsay.

08:49AM 19 MS. PANAGAKOS: Your Honor, I would move to admit

08:49AM 20 Exhibit 9051-31.

08:49AM 21 MR. NAMMAR: Objection, Your Honor. These are hearsay

08:49AM 22 statements of the defendant, and as enumerated on page ten of

08:49AM 23 our trial brief, they should not be admitted pursuant to *United*

08:49AM 24 *States v. Fernandez*. They are not state of mind. There is no

08:49AM 25 reason under the hearsay rules to admit them.

08:49AM 1 THE COURT: The objection is overruled. 9051-31 is
08:49AM 2 admitted.

08:49AM 3 (Exhibit 9051-31 was received in evidence.)

08:49AM 4 MS. PANAGAKOS: Thank you. And may I publish to the
08:49AM 5 jury?

08:49AM 6 THE COURT: You may.

08:49AM 7 BY MS. PANAGAKOS:

08:49AM 8 Q Thank you, Your Honor. So do you see on page two, which
08:49AM 9 is on the screen at the bottom in white, Mr. Miske is asking if
08:49AM 10 you could get from Wayne access to his truck account so that
08:50AM 11 Delia could set up auto pay to make these payments. And you're
08:50AM 12 telling Mike that you don't have access to his Navy Fed stuff
08:50AM 13 anymore, but you gave him an account number where the payment
08:50AM 14 comes out of?

08:50AM 15 A Yes.

08:50AM 16 Q And then can we go back to page one.

08:50AM 17 And so in the first item you're texting Mr. Miske's
08:50AM 18 text to you; you are forwarding that to Wayne, right?

08:50AM 19 A Yes.

08:50AM 20 Q And then in the second text, Wayne is giving you a
08:50AM 21 response, telling you that he's tried to give the information
08:50AM 22 to Delia?

08:50AM 23 A Yes.

08:50AM 24 Q And you don't believe him, right?

08:50AM 25 A Yes.

08:50AM 1 Q And you are saying "You can't even access this shit

08:50AM 2 anymore," right?

08:51AM 3 A Yes.

08:51AM 4 Q And then you're telling him, "You're probably hiding so

08:51AM 5 you can take the money and buy pills."

08:51AM 6 A Yes.

08:51AM 7 Q And so that's what you thought at this time, was that you

08:51AM 8 suspected Wayne Miller of hiding money from Mike in order to

08:51AM 9 use the money that Mike was using for the car payments to get

08:51AM 10 pills?

08:51AM 11 A Yes.

08:51AM 12 Q And this is October 1, 2017?

08:51AM 13 A November 1.

08:51AM 14 Q I'm sorry. Correct, thank you. So the earlier one where

08:51AM 15 you told Mr. Miller that Mike was done with Wayne was

08:51AM 16 September 30th. And now a month later, you're telling him you

08:51AM 17 suspect -- you are telling Wayne you suspect him of hiding from

08:51AM 18 Mike because he is taking Mike's money?

08:51AM 19 A Yes.

08:51AM 20 Q And eventually, you did learn that that in fact occurred,

08:51AM 21 right?

08:51AM 22 A If you bring up additional paperwork, it will refresh my

08:51AM 23 memory.

08:52AM 24 MS. PANAGAKOS: Your Honor, Exhibit 9051-032, pages

08:52AM 25 one and two -- oh, that is on the 8th supplemental list. It's

08:52AM 1 not been admitted, but what I'd like to show Ms. Tufele is page
08:52AM 2 one, and then through item 18 on page two. So we have a
08:52AM 3 redacted copy digitally. I just haven't gotten it into your
08:52AM 4 binder yet, but that's what I'd like to -- what I would like
08:52AM 5 to present to Ms. Tufele.

08:52AM 6 THE COURT: Sure. You can show it to her.

08:52AM 7 BY MS. PANAGAKOS:

08:52AM 8 Q Can we enlarge item number one.

08:52AM 9 And that's your phone number, right?

08:52AM 10 A Yes.

08:52AM 11 Q And this is another text from you to Wayne on a different
08:52AM 12 one of his phones?

08:52AM 13 A Yes.

08:52AM 14 Q And this is April 18th, 2018, right?

08:53AM 15 A Yes.

08:53AM 16 Q And so does this refresh your recollection about
08:53AM 17 eventually someone coming to repossess the Dually?

08:53AM 18 A Yes.

08:53AM 19 Q And then if we can go down to items -- on the bottom of
08:53AM 20 this page, items 14 and 15.

08:53AM 21 And you see on item 14, does that refresh your
08:53AM 22 recollection as to Mike Miske finding out about the Dually
08:53AM 23 being repossessed?

08:53AM 24 A Yes.

08:53AM 25 Q And then that image in item 15, if we could turn to page

08:53AM 1 four of this exhibit.

08:53AM 2 Is that what's in that image? It's a screenshot of

08:53AM 3 texts between you and Mr. Miske, right?

08:53AM 4 A Yes.

08:53AM 5 Q And can we enlarge the bottom. And this is a text showing

08:54AM 6 that the payments on the -- for the Dually had been delinquent,

08:54AM 7 right?

08:54AM 8 A Yes.

08:54AM 9 MS. PANAGAKOS: Your Honor, I would move to admit

08:54AM 10 9051-32 as redacted. I could supply a redacted copy for the

08:54AM 11 court later under this number, or as an A, but I'm not going to

08:54AM 12 move to admit the entire 9051-32.

08:54AM 13 THE COURT: So what are you offering? 1 through 18?

08:54AM 14 MS. PANAGAKOS: Yes. And then the last page, which is

08:54AM 15 the thumbnail from item 15 on page one, the second text from

08:54AM 16 the bottom.

08:54AM 17 THE COURT: Any objection, counsel?

08:54AM 18 MR. NAMMAR: Same objection.

08:54AM 19 THE COURT: Same ruling. My suggestion is that you

08:54AM 20 mark it as a separate or new exhibit. That will be the cleaner

08:54AM 21 way to do it. If you wish, maybe, if I could suggest 9051-32A

08:54AM 22 might be the best way to approach it. Is that acceptable?

08:55AM 23 MS. PANAGAKOS: Thank you, Your Honor.

08:55AM 24 THE COURT: We will go ahead and with that

08:55AM 25 explanation, we will admit 9051-32A. And please provide that

08:55AM 1 to my courtroom manager during the next break.

08:55AM 2 (Exhibit 9051-32A was received in evidence.)

08:55AM 3 MS. PANAGAKOS: Thank you, Your Honor. So can we
08:55AM 4 highlight and publish for the jury now page one, and can we
08:55AM 5 highlight the first three items.

08:55AM 6 THE COURT: Yes.

08:55AM 7 BY MS. PANAGAKOS:

08:55AM 8 Q So this is April 18, 2018, and you're telling Wayne that
08:55AM 9 someone came to possess the Dually -- repossess the Dually?

08:55AM 10 A Yes.

08:55AM 11 Q And you are saying this is getting out of control, right?

08:55AM 12 A Yes.

08:55AM 13 Q And you are telling him he blows his money on dumb shit?

08:56AM 14 A I tell him that he should start giving me his paycheck so
08:56AM 15 I can pay his things off.

08:56AM 16 Q And can we enlarge item six, please. You are telling him
08:56AM 17 on April 18, 2018 that he can't make responsible decisions,
08:56AM 18 right?

08:56AM 19 A Yes.

08:56AM 20 Q And then can we go to item 14, please. You can see there
08:56AM 21 that on the next day, you are telling him that "M also texted
08:56AM 22 me today. He found out about the repo people."

08:56AM 23 A Yes.

08:56AM 24 Q And then you see the thumbnail in item 15, right?

08:56AM 25 A Yes.

08:56AM 1 Q Okay. Can we turn to page four and publish.

08:56AM 2 And that's a text between you and Mr. Miske that you
08:57AM 3 are forwarding to Mr. Miller in that thumbnail, right?

08:57AM 4 A Yes.

08:57AM 5 Q And this is Mr. Miske saying, "Brah, we have been paying
08:57AM 6 the truck each month and the repo guys went to your house last
08:57AM 7 night"?

08:57AM 8 A Yes.

08:57AM 9 Q And the bottom item, if we could enlarge that, that's the
08:57AM 10 statement showing that the loan is delinquent?

08:57AM 11 A Yes.

08:57AM 12 Q And this is happening at the time of Caleb's birthday?

08:57AM 13 A Yes.

08:57AM 14 Q And you're still friends with Mike, and that's why you are
08:57AM 15 sharing birthday wishes?

08:57AM 16 A Yes.

08:57AM 17 Q And then if we can go to page two as redacted, and
08:57AM 18 highlight item 17 and 18. You're telling him he is \$4,000
08:58AM 19 behind on the truck.

08:58AM 20 And the truck is the one that Mike is making the
08:58AM 21 payments on, right?

08:58AM 22 A Yes.

08:58AM 23 Q So \$4,000 -- it was \$923 a month was the payment, right?

08:58AM 24 A Yes.

08:58AM 25 Q On the page before, if we can go back to page one on the

08:58AM 1 bottom, item 16, that's Wayne.

08:58AM 2 He is ducking you again, saying this is all crazy,

08:58AM 3 right?

08:58AM 4 A Yes.

08:58AM 5 Q And then could we go back to page two and highlight item

08:58AM 6 18. And your answer is, "It's not crazy. For four months, you

08:58AM 7 were swiping the money that he was putting into your account

08:58AM 8 for the truck."

08:58AM 9 A Yes.

08:58AM 10 Q So yesterday you testified that Wayne went to rehab?

08:58AM 11 A Yes.

08:58AM 12 Q How many times?

08:58AM 13 A I don't remember exactly, but a few times.

08:58AM 14 Q How many?

08:58AM 15 A A few, like, more than two at least.

08:58AM 16 Q And one was in Las Vegas?

08:59AM 17 A Yes.

08:59AM 18 Q And where was the other one?

08:59AM 19 A Here in Honolulu.

08:59AM 20 Q Where?

08:59AM 21 A I think Sand Island.

08:59AM 22 Q How long did he stay?

08:59AM 23 A Like, maybe a week.

08:59AM 24 Q So you realize that's a year program, right?

08:59AM 25 A I don't know how long it is.

08:59AM 1 Q So he went for a week and he just checked out; he didn't
08:59AM 2 succeed?

08:59AM 3 A Correct.

08:59AM 4 Q And clearly at this time in April of 2018, you don't
08:59AM 5 believe he is clean and sober?

08:59AM 6 A Correct.

08:59AM 7 Q And in the end of September 2017, when M was done with
08:59AM 8 him, you didn't believe he was clean and sober?

08:59AM 9 A Correct.

08:59AM 10 Q And in October and November, when he was ducking Sheena,
08:59AM 11 you didn't believe he was clean and sober?

08:59AM 12 A Correct.

08:59AM 13 Q And you testified yesterday that Wayne's drug addiction
09:00AM 14 affected his ability to pay his bills and made him tired, but
09:00AM 15 didn't affect much anything else?

09:00AM 16 A Not that I can recall.

09:00AM 17 Q It actually ruined your family, right?

09:00AM 18 A Yes.

09:00AM 19 Q So that's something else?

09:00AM 20 A Yes.

09:00AM 21 Q And it ruined his friendships?

09:00AM 22 A Yes.

09:00AM 23 Q He burned his bridge with Mike?

09:00AM 24 A Yes.

09:00AM 25 Q And that was in September and October of 2017?

09:00AM 1 A Yes.

09:00AM 2 Q He had actually told Mike he was going to go to rehab
09:00AM 3 after JD's birthday that year, right?

09:00AM 4 A I don't know about that conversation.

09:00AM 5 MS. PANAGAKOS: I'd like to show Ms. Tufele 91-92.

09:00AM 6 THE COURT: 91-92 I don't find --

09:00AM 7 MS. PANAGAKOS: That is on the 6th supplemental
09:00AM 8 exhibit list. And it has not been admitted; I'd just like to
09:00AM 9 show Ms. Tufele. 9011, did I say? I'm sorry.

09:01AM 10 THE COURT: Yeah, that's what I'm saying. That's not
09:01AM 11 a numbering scheme I'm familiar with.

09:01AM 12 MS. PANAGAKOS: Okay, I'm sorry, I meant 9011-092.
09:01AM 13 No? I believe it's on the 6th supplemental exhibit list.

09:01AM 14 MR. KENNEDY: It is, Counsel.

09:01AM 15 THE COURT: Okay. Go ahead.

09:01AM 16 BY MS. PANAGAKOS:

09:01AM 17 Q Ms. Tufele, do you see that this is another excerpt of
09:01AM 18 text messages between you and Mr. Miller?

09:01AM 19 A Yes.

09:01AM 20 Q And this is in the time frame -- if you scroll, you can
09:02AM 21 see at the beginning of this report it begins on October 2,
09:02AM 22 2017, right?

09:02AM 23 A Yes.

09:02AM 24 Q And then if we go to page three.

09:02AM 25 At the end of this report, it goes to October 17th,

09:02AM 1 2017, right?

09:02AM 2 A Yes.

09:02AM 3 Q And so this is a text between you and Mr. Miller during
09:02AM 4 that two-week time period?

09:02AM 5 A Yes.

09:02AM 6 Q And I'd like to direct your attention to item number 13.

09:02AM 7 Does this refresh your recollection as to the state of
09:02AM 8 your relationship at this time?

09:02AM 9 A Yes.

09:02AM 10 Q By this time, he had ruined your family?

09:02AM 11 A Yes.

09:02AM 12 Q And if we could go -- can we see number 12.

09:03AM 13 And by this time, he had burned his bridges with his
09:03AM 14 friends?

09:03AM 15 A Yes.

09:03AM 16 Q And if we can go to page three now, item 49.

09:03AM 17 And does this refresh your recollection as to Wayne
09:03AM 18 having told Mike Miske that after JD's birthday, that Wayne was
09:03AM 19 going to go to rehab?

09:03AM 20 A Yes.

09:03AM 21 Q And he didn't go at this time, right?

09:03AM 22 A I don't remember when he went.

09:03AM 23 Q But he had not gone by now?

09:03AM 24 A Yes.

09:03AM 25 Q And no one believed him that he was going to go?

09:03AM 1 A Yes.

09:03AM 2 Q And everyone thought his word was shit?

09:03AM 3 A Yes.

09:03AM 4 Q And you actually were calling him over and over again a
09:03AM 5 fraud on this very day, October 16, 2017?

09:03AM 6 A Yes.

09:03AM 7 Q And you talked throughout this text about him lying,
09:04AM 8 right, if we go back to page one item number three.

09:04AM 9 You told him he was lying, right?

09:04AM 10 A Yes.

09:04AM 11 Q And then item number four, "you keep lying," right. And
09:04AM 12 then if we could go to page three, item 32. At this point in
09:04AM 13 time you told him you couldn't fucking stand --

09:04AM 14 MR. NAMMAR: Objection to her reading from the
09:04AM 15 exhibit.

09:04AM 16 THE COURT: Sustained.

09:04AM 17 MS. PANAGAKOS: Your Honor, I would move to admit
09:04AM 18 9011-92.

09:04AM 19 MR. NAMMAR: 401, 403 hearsay.

09:04AM 20 THE COURT: Sustained.

09:05AM 21 MS. PANAGAKOS: I'd like to show Ms. Tufele
09:05AM 22 Exhibit 8010-20, which has been admitted and is on the first
09:05AM 23 supplemental list. And I'll ask to publish this to the jury.

09:05AM 24 THE COURT: Go ahead. It's been admitted.

09:05AM 25 BY MS. PANAGAKOS:

09:05AM 1 Q And Ms. Tufele, you recognize this as another series of
09:05AM 2 text messages between you and Mr. Miller?
09:05AM 3 A Yes.
09:05AM 4 Q And this is on October 17th, 18th, and October 31st, 2017,
09:05AM 5 right?
09:05AM 6 A Yes.
09:05AM 7 Q And if we can go to -- you see again in item six there is
09:06AM 8 an image of a thumbnail, right?
09:06AM 9 A Yes.
09:06AM 10 Q And if we turn to the next page of this exhibit, that's a
09:06AM 11 text between you and Mr. Miske --
09:06AM 12 A Yes.
09:06AM 13 Q -- that you forwarded to Wayne?
09:06AM 14 A Yes.
09:06AM 15 Q And Mr. Miske again, now, October 31st, upset with Wayne,
09:06AM 16 right?
09:06AM 17 A Yes.
09:06AM 18 Q Threatening to go to his PO?
09:06AM 19 A Yes.
09:06AM 20 Q That's his probation officer?
09:06AM 21 A Yes.
09:06AM 22 Q Because he was on supervised release?
09:06AM 23 A Yes.
09:06AM 24 Q And there were a number of times you threatened to go to
09:06AM 25 his PO too, right?

09:06AM 1 A Yes.

09:06AM 2 Q And then if we go back to page one of this exhibit, and
09:06AM 3 items seven and eight, you say, "You're lying to me, I know it.
09:06AM 4 You wanted me to tell him you came home yesterday when you came
09:06AM 5 home Friday night." That was Mr. Miller asking you to lie to
09:07AM 6 Mr. Miske, right, about when he came home?

09:07AM 7 A Yes.

09:07AM 8 Q And then again in item three of this text, your view of
09:07AM 9 Mr. Miller on October 17, 2017, was that he was a lying,
09:07AM 10 selfish loser?

09:07AM 11 A Yes.

09:07AM 12 Q Who you didn't even know anymore?

09:07AM 13 A Yes.

09:07AM 14 Q And neither did Mr. Miske?

09:07AM 15 A Um-hm.

09:07AM 16 Q Okay. We could take that down. Yesterday, you testified
09:07AM 17 that you thought that Wayne had gotten clean for the month
09:07AM 18 before his arrest?

09:07AM 19 A Yes.

09:07AM 20 MS. PANAGAKOS: I'd like to show Ms. Tufele
09:08AM 21 Exhibit 9011-95, which has not been admitted and is on the
09:08AM 22 sixth supplemental list.

09:08AM 23 THE COURT: Go ahead.

09:08AM 24 BY MS. PANAGAKOS:

09:08AM 25 Q Ms. Tufele, do you see that this is -- can we enlarge the

09:08AM 1 first four items.

09:08AM 2 Can you see that this is a -- you remember that

09:08AM 3 Mr. Miller got arrested on July 1st, 2018, right?

09:08AM 4 A No.

09:08AM 5 Q I mean August 1st, 2018?

09:08AM 6 A Yes.

09:08AM 7 Q And so these texts are between you and Mr. Miller --

09:08AM 8 A Yes.

09:08AM 9 Q -- July 6th, July 9th, 2018?

09:08AM 10 A Yes.

09:08AM 11 Q This is the month before his arrest?

09:08AM 12 A Yes.

09:08AM 13 Q And at that time -- does this refresh your recollection as

09:08AM 14 to what -- your view of Mr. Miller in the month before his

09:08AM 15 arrest?

09:09AM 16 A Yes.

09:09AM 17 Q You didn't think he was sober at that time; you thought he

09:09AM 18 was up to no good again, right?

09:09AM 19 A Right. I don't recall, but I think like a week or two

09:09AM 20 maybe before he went away, he was a little bit better.

09:09AM 21 Q Could we go down to the bottom on this, starting with

09:09AM 22 items 11 and highlight items 11 through item 19.

09:09AM 23 And so this is now July 13th, 2018, two and a half

09:09AM 24 weeks before his arrest, right?

09:09AM 25 A Okay, yes.

09:09AM 1 Q At this point in time you did not think he was --

09:09AM 2 A Correct.

09:09AM 3 Q -- you hoped he'd died?

09:09AM 4 A Yes.

09:09AM 5 Q And he threatened to take one of your dads with him and

09:09AM 6 your mom, too, if she was in the way?

09:09AM 7 A Okay, yes.

09:09AM 8 Q So you didn't think he was sober a month before he was

09:09AM 9 arrested?

09:09AM 10 A Yes.

09:10AM 11 MS. PANAGAKOS: Your Honor, I would move this exhibit

09:10AM 12 into evidence. It's impeachment by contradiction; not

09:10AM 13 contradictory statements, but contradiction. It shows the

09:10AM 14 state of the relationship is diametrically opposed to what this

09:10AM 15 witness testified to.

09:10AM 16 THE COURT: Mr. Nammar?

09:10AM 17 MR. NAMMAR: It's hearsay and she acknowledged that

09:10AM 18 it's not impeachment by contradiction.

09:10AM 19 THE COURT: The objection is overruled. 9011-95 is

09:10AM 20 admitted.

09:10AM 21 (Exhibit 9011-95 was received in evidence.)

09:10AM 22 MS. PANAGAKOS: So I'd like to publish it to the jury

09:10AM 23 now.

09:10AM 24 THE COURT: Go ahead.

09:10AM 25 BY MS. PANAGAKOS:

09:10AM 1 Q And let's start up at the top, item two. Well, let's
09:11AM 2 start with one.

09:11AM 3 On July 6th, you're asking Mr. Miller what he is doing
09:11AM 4 that he can't talk?

09:11AM 5 A Yes.

09:11AM 6 Q And then in item two on July 9th, you tell Mr. Miller:
09:11AM 7 "You are up to no good again. Don't ever say you're doing it
09:11AM 8 for your family. That's all lies. You're doing it for
09:11AM 9 yourself"?

09:11AM 10 A Yes.

09:11AM 11 Q And there were times like this where he would do whatever
09:11AM 12 it is that he would do that you disagreed with, and he would
09:11AM 13 tell you that he was doing it for you?

09:11AM 14 A I don't understand what that -- what your statement is.

09:11AM 15 Q You told him, "Don't ever say you're doing it for your
09:11AM 16 family"?

09:11AM 17 A Yeah, like going to rehab and things like that, because he
09:11AM 18 needs to do things for himself.

09:11AM 19 Q And he is lying about it?

09:11AM 20 A Yes.

09:11AM 21 Q Okay. And then if we can look at item four. The bottom
09:12AM 22 paragraph, all I needed. "All I needed you to do was go to
09:12AM 23 work and come home and spend time with us. But that's not
09:12AM 24 enough for you. So you'll see that in the end, you wish you
09:12AM 25 did just that."

09:12AM 1 And those are the kinds of opportunities Mr. Miske
09:12AM 2 was trying to provide for him, right? He offered him a job at
09:12AM 3 the Kama'aina Termite?
09:12AM 4 A Yes.
09:12AM 5 Q And he invested in the poke truck for you guys?
09:12AM 6 A Yes.
09:12AM 7 Q And he also helped him get a job at the movies?
09:12AM 8 A Yes.
09:12AM 9 Q That was a good job, right?
09:12AM 10 A Yes.
09:12AM 11 Q And he tried to help him -- get him a job as a
09:12AM 12 longshoreman, too?
09:12AM 13 A Yes.
09:12AM 14 Q If we could keep reading down on this text. And then you
09:12AM 15 tell him -- you said yesterday you expressed anger, and I guess
09:13AM 16 that's one instance here on July 13th, item 11 where you say,
09:13AM 17 "I hope you die."
09:13AM 18 A Yes.
09:13AM 19 Q And then in item 13, Wayne responds, "I'm going to take
09:13AM 20 one of your dads with me. Trust me. Maybe both."
09:13AM 21 That's because you had a biological dad. Is that
09:13AM 22 Lenny?
09:13AM 23 A Yes.
09:13AM 24 Q And then another dad?
09:13AM 25 A Yes.

09:13AM 1 Q And he threatened Lenny more than once, right?

09:13AM 2 A No.

09:13AM 3 Q And then in item 17 he says, "If your mom's in the way,
09:13AM 4 her too."

09:13AM 5 A Yes.

09:13AM 6 Q And then in item 19, "You don't learn your mouth is going
09:13AM 7 to get you into shit you cannot handle. I promise you I'm
09:13AM 8 going to go on a spree and your parents will be on that list,
09:13AM 9 and I'm going to wipe them out all along the way."

09:13AM 10 A Yes.

09:13AM 11 Q Are you aware that Wayne was a confidential informant for
09:14AM 12 the FBI when he was making these threats to you?

09:14AM 13 A No. I just found out yesterday when you told me.

09:14AM 14 Q So you say he never threatened Lenny before?

09:14AM 15 A Not that I can recall. I mean, maybe to me, but not to my
09:14AM 16 dad.

09:14AM 17 Q But to you, he did?

09:14AM 18 A Yes.

09:14AM 19 Q He threatened Lenny more than once?

09:14AM 20 A In this text message, yes.

09:14AM 21 Q And in other text messages earlier in time?

09:14AM 22 A Maybe. I don't remember.

09:14AM 23 MS. PANAGAKOS: I'd like to show Ms. Tufele

09:15AM 24 Exhibit 9051-33, which is on the 8th supplemental list and has
09:15AM 25 not been admitted into evidence.

09:15AM 1 BY MS. PANAGAKOS:

09:15AM 2 Q Ms. Tufele, do you recognize this as more text messages
09:15AM 3 between you and Mr. Miller?

09:15AM 4 A Yes.

09:15AM 5 Q And the context of this is -- what did you have, like, a
09:15AM 6 family plan where you had the ability to turn his phone off?

09:15AM 7 A Yes.

09:15AM 8 Q And you did that because of all of his texting with drug
09:15AM 9 dealers, right?

09:15AM 10 A And answer his phone.

09:15AM 11 Q If you look at item four in this exhibit, if we could
09:15AM 12 highlight items one through four. You are telling -- let's
09:15AM 13 see.

09:15AM 14 A Yes, okay, now I recall.

09:15AM 15 Q You turned off his phone because of all his texting with
09:15AM 16 drug dealers?

09:15AM 17 A Yes.

09:15AM 18 Q And he got mad at you?

09:15AM 19 A Yes.

09:15AM 20 Q And you told him you can have the phone number but you're
09:16AM 21 not going to use one of my phones that's on my plan to text
09:16AM 22 drug dealers?

09:16AM 23 A Yes.

09:16AM 24 Q And Mike Miske was not one of those drug dealers?

09:16AM 25 A I don't know.

09:16AM 1 Q You never saw his phone number --

09:16AM 2 A I don't know.

09:16AM 3 Q You don't know?

09:16AM 4 A No. Just to clarify, it's for him to buy pills for
09:16AM 5 himself.

09:16AM 6 Q You never saw him buy pills from Mr. Miske?

09:16AM 7 A No.

09:16AM 8 Q You are aware that he -- you're now aware that he was in
09:16AM 9 the drug business with Ali'i, right?

09:16AM 10 A From what you told me yesterday, yes.

09:16AM 11 Q And from the fact that Ali'i has been -- was arrested in
09:16AM 12 September of 2017 for dealing drugs?

09:16AM 13 MR. NAMMAR: Objection; calls for speculation.

09:16AM 14 THE COURT: Sustained.

09:16AM 15 BY MS. PANAGAKOS:

09:16AM 16 Q You recall Ali'i Lee getting arrested for drug
09:16AM 17 distribution, right?

09:16AM 18 A Yes.

09:16AM 19 Q You recall telling Mr. Miller the times when you were
09:16AM 20 angry that you hoped he rotted in jail like Mr. Ali'i Wilcox?

09:17AM 21 A Sure.

09:17AM 22 Q You know they were friends?

09:17AM 23 A Yes.

09:17AM 24 Q And they both dealt drugs?

09:17AM 25 A I don't know at the time.

09:17AM 1 Q You do now?

09:17AM 2 A Now I know.

09:17AM 3 Q And you know that he dealt drugs with Jonah Ortiz?

09:17AM 4 A Yes.

09:17AM 5 Q And back to 9051-33, on page two, if we could highlight

09:17AM 6 items 14 and 15.

09:17AM 7 You see that these texts are April 15th, 2018?

09:17AM 8 A Yes.

09:17AM 9 Q And you see that he's threatening Lenny in item 15?

09:17AM 10 A Okay.

09:17AM 11 Q And then if we can go to page three and look at items 35

09:18AM 12 and 36.

09:18AM 13 And do you see again, he is threatening your dads on

09:18AM 14 April 17th, 2018?

09:18AM 15 A Yes.

09:18AM 16 Q And you tell him he is evil.

09:18AM 17 A Yes.

09:18AM 18 Q They've never been anything good -- your dads, both of

09:18AM 19 them, have never been anything but good to Mr. Miller?

09:18AM 20 A Yes.

09:18AM 21 Q And this is how he treated them?

09:18AM 22 A Um-hm.

09:18AM 23 Q And you personally have seen Mr. Miske be good to

09:18AM 24 Mr. Miller?

09:18AM 25 A Yes.

09:18AM 1 MS. PANAGAKOS: I move to admit this exhibit, Your
09:18AM 2 Honor.

09:18AM 3 MR. NAMMAR: 401, 403 hearsay. And there is only
09:18AM 4 three messages that could be construed by defense counsel as
09:18AM 5 impeachment by contradiction.

09:18AM 6 MS. PANAGAKOS: Your Honor, the entire text is
09:19AM 7 impeachment by contradiction. She said yesterday that her
09:19AM 8 relationship with Mr. Miller was not impacted by drug use other
09:19AM 9 than than through sleepiness and delinquent bills.

09:19AM 10 THE COURT: The objection is sustained.

09:19AM 11 BY MS. PANAGAKOS:

09:19AM 12 Q Yesterday, you testified about a photograph of you and
09:19AM 13 Mr. Miske at a memorial service for Hansen Apo?

09:19AM 14 A Yes.

09:19AM 15 Q You were still friends with Mr. Miske at that time, right?

09:19AM 16 A Yes.

09:19AM 17 Q You had actually reached out to him when you learned that
09:19AM 18 Mr. Apo had died, right?

09:19AM 19 A Yes.

09:19AM 20 Q And that was in April of 2019?

09:20AM 21 A Sounds about right.

09:20AM 22 Q And I'd like to -- let me see. I'd like to show
09:20AM 23 Ms. Tufele Exhibit 9051-51.

09:20AM 24 Do you recognize this photograph?

09:20AM 25 A Yes.

09:20AM 1 Q That's a photograph of Hansen Apo and your son?

09:20AM 2 A Yes.

09:20AM 3 Q JD in April of 2019, right?

09:20AM 4 A Yes.

09:20AM 5 Q And you texted that to Mr. Miske, right?

09:20AM 6 A Yes.

09:20AM 7 Q Do you remember when Wayne tried to get a job as a

09:20AM 8 longshoreman?

09:20AM 9 A I don't remember when.

09:20AM 10 Q Do you remember writing a letter for him?

09:20AM 11 A Yes. Actually I recall one in probably 2014, 2015.

09:21AM 12 Q And you know it was an issue with that job because he had

09:21AM 13 a felony conviction, right?

09:21AM 14 A Yes.

09:21AM 15 Q And you tried to help him get a waiver so he could get

09:21AM 16 that job?

09:21AM 17 MR. NAMMAR: Objection to beyond the scope.

09:21AM 18 THE COURT: Sustained.

09:21AM 19 MS. PANAGAKOS: I have nothing further, Your Honor.

09:21AM 20 THE COURT: Any redirect?

09:21AM 21 MR. NAMMAR: Yes, Your Honor.

09:21AM 22 REDIRECT EXAMINATION

09:21AM 23 BY MR. NAMMAR:

09:21AM 24 Q Ms. Tufele, you were asked about a number of text messages

09:22AM 25 where they essentially said that Michael Miske was done with

09:22AM 1 Wayne Miller around 2017.

09:22AM 2 Do you recall that?

09:22AM 3 A Yes.

09:22AM 4 Q Fast forwarding to 2018 now, from the messages that we
09:22AM 5 looked at yesterday, did Mr. Miske to you seem very interested
09:22AM 6 as to whether Wayne Miller was cooperating?

09:22AM 7 A Yes.

09:22AM 8 Q You were shown a lot of messages with you and Mr. Miller,
09:22AM 9 and it seemed like in some of those messages, you were calling
09:22AM 10 Mr. Miller a liar.

09:22AM 11 A Yes.

09:22AM 12 Q You were upset with him at the time?

09:22AM 13 A Yes.

09:23AM 14 Q And this is the same time that Mr. Miller was on drugs?

09:23AM 15 A Yes.

09:23AM 16 Q Would you agree that Mr. Miller was different when he was
09:23AM 17 not on drugs?

09:23AM 18 A Yes.

09:23AM 19 Q If we could bring up -- if the defense could bring up
09:23AM 20 8010-20, please, which is in evidence. If you could go to page
09:23AM 21 two.

09:23AM 22 Do you recall being shown this message, Ms. Tufele?

09:23AM 23 A Yes.

09:23AM 24 Q This is a screenshot of a communication between you and
09:24AM 25 Mr. Miske; is that right?

09:24AM 1 A Yes.

09:24AM 2 Q Do you know what this message is about?

09:24AM 3 A No.

09:24AM 4 Q Do you know what the golf shop reference is?

09:24AM 5 A No.

09:24AM 6 Q When Mr. Miske references "deeper shit" at the bottom

09:24AM 7 there, do you know what he was in deep shit about, Mr. Miske at

09:24AM 8 this point?

09:24AM 9 A No.

09:24AM 10 Q Do you know if Mr. Miske is telling the truth in this

09:24AM 11 message?

09:24AM 12 A Yes.

09:24AM 13 Q You know he is telling the truth in this message?

09:24AM 14 A Wait. Do I know if Mike Miske is telling the truth in

09:24AM 15 this message?

09:24AM 16 Q Yes. Do you know if Mr. Miller went to a golf shop or

09:24AM 17 sent somebody to a golf shop?

09:24AM 18 A No, I don't know.

09:24AM 19 Q Do you know if Mr. Miske is trying to cover something up

09:24AM 20 in this message?

09:24AM 21 A I don't know, but probably.

09:24AM 22 Q So defense counsel asked you a number of times if --

09:25AM 23 MR. NAMMAR: Sorry. Could we publish 8010-20? My

09:25AM 24 mistake.

09:25AM 25 THE COURT: Go ahead. It's been admitted.

09:25AM 1 BY MR. NAMMAR:

09:25AM 2 Q Was this the message at the bottom that I was just asking
09:25AM 3 you about with the golf shop?

09:25AM 4 A Yes.

09:25AM 5 Q You can take it down. You were shown some messages in
09:25AM 6 2018 and you were asked by defense counsel if Mr. Miske was
09:25AM 7 your friend at that point?

09:25AM 8 A Yes.

09:25AM 9 Q Sounds like, though, at a certain point, you began to be
09:25AM 10 afraid of Mr. Miske?

09:25AM 11 A Yes.

09:25AM 12 Q You began to be concerned for your safety?

09:25AM 13 A Yes.

09:25AM 14 Q At that point, did you still consider Mr. Miske your
09:26AM 15 friend?

09:26AM 16 A No.

09:26AM 17 Q Do you consider him your friend today?

09:26AM 18 A No.

09:26AM 19 Q Why not?

09:26AM 20 A After learning all the things that him and Wayne have been
09:26AM 21 involved in.

09:26AM 22 Q You were asked about whether Mr. Miske worked at Kama'aina
09:26AM 23 Termite and Pest Control; do you recall that?

09:26AM 24 A If Wayne worked at Kama'aina?

09:26AM 25 Q I'm sorry, yes; if Mr. Miller worked there, were you asked

09:26AM 1 about that?

09:26AM 2 A Yes.

09:26AM 3 Q Did you ever actually see Mr. Miller doing work at
09:26AM 4 Kama'aina Termite and Pest Control?

09:26AM 5 A Not fumigating, but at the shop on Queen Street.

09:26AM 6 Q Was he doing any work when you saw him there?

09:26AM 7 A No.

09:26AM 8 Q Did you ever actually see him run any errands for
09:26AM 9 Kama'aina Termite and Pest Control?

09:26AM 10 A I would see him leave the shop.

09:26AM 11 Q Okay.

09:26AM 12 A But I didn't see what errands he was doing.

09:27AM 13 Q Did you ever see him supervise anyone over there?

09:27AM 14 A No.

09:27AM 15 Q Did you ever hear about him doing any fumigations?

09:27AM 16 A No.

09:27AM 17 Q Did you ever hear about him doing any pest control
09:27AM 18 services?

09:27AM 19 A No.

09:27AM 20 Q You were asked some questions about the Poke Shack by
09:27AM 21 defense counsel. When you testified yesterday, you understood
09:27AM 22 Mr. Miske and Mr. Miller were the actual owners?

09:27AM 23 A Yes.

09:27AM 24 Q And you told us that you filed a tax return in 2018
09:27AM 25 because no one had filed a tax return yet for the Poke Shack;

09:28AM 1 is that right?

09:28AM 2 A Yes.

09:28AM 3 Q I think you said it was the right thing to do, you
09:28AM 4 thought?

09:28AM 5 A Yes.

09:28AM 6 Q And I think you also told us yesterday that you had
09:28AM 7 checked with Michael Miske and Trisha Castro, but nobody ever
09:28AM 8 got back to you; is that right?

09:28AM 9 A Yes.

09:28AM 10 MR. NAMMAR: Your Honor, at this time I would move to
09:28AM 11 admit Exhibit 9-572, which is from our first exhibit list.
09:28AM 12 It's a two-page exhibit that's related to the Poke Shack. It's
09:28AM 13 accompanied by business records certification and it's also
09:28AM 14 pursuant to our stipulation that applies to business records
09:28AM 15 certifications which was filed at Document 1266.

09:28AM 16 THE COURT: Which exhibit list is it on?

09:28AM 17 MR. NAMMAR: It is 9-572.

09:28AM 18 THE COURT: Right. But which exhibit list is it on?

09:28AM 19 MR. NAMMAR: Oh, the first one. I'm sorry, Your
09:28AM 20 Honor.

09:28AM 21 THE COURT: The original?

09:28AM 22 MR. NAMMAR: Yes. If we can bring that up for the
09:29AM 23 witness only.

09:29AM 24 THE COURT: You may show it to the witness.

09:29AM 25 MR. NAMMAR: Can you go to page two. Was there -- I'm

09:30AM 1 sorry, Your Honor, was it admitted? I apologize.

09:30AM 2 THE COURT: No. I thought you were going to ask
09:30AM 3 foundational questions.

09:30AM 4 MR. NAMMAR: I'm not, just because on page one of the
09:30AM 5 exhibit, it's accompanied by a certification under 902 and it
09:30AM 6 also -- the parties have stipulated that business records can
09:30AM 7 come in.

09:30AM 8 THE COURT: Okay. Any objection, Ms. Panagakos?

09:30AM 9 MS. PANAGAKOS: Your Honor, there is a stipulation as
09:30AM 10 to authenticity. But -- because these are text messages, I
09:30AM 11 think there is a hearsay issue as to this particular case.

09:30AM 12 MR. NAMMAR: There is no hearsay issue when they're
09:30AM 13 accompanied by a business record certification. That's the
09:31AM 14 whole reason for one under 803(6) and 902.

09:31AM 15 THE COURT: Is this witness involved in this email
09:31AM 16 exchange somehow?

09:31AM 17 MR. NAMMAR: No, but it's regarding something that she
09:31AM 18 has already testified to.

09:31AM 19 THE COURT: So Ms. Panagakos, I assume, is that an
09:31AM 20 objection that you made?

09:31AM 21 MS. PANAGAKOS: Objection as to using it with this
09:31AM 22 witness. Yes, Your Honor.

09:31AM 23 THE COURT: The objection is sustained.

09:31AM 24 MR. NAMMAR: So is it not admitted right now, Your
09:31AM 25 Honor?

09:31AM 1 THE COURT: That's generally what objection sustained
09:31AM 2 means, counsel.
09:31AM 3 BY MR. NAMMAR:
09:31AM 4 Q Regarding the Poke Shack that we have talked about, did
09:31AM 5 Mr. Miske ever tell you why he didn't want to be the owner on
09:31AM 6 paper?
09:31AM 7 A No.
09:31AM 8 Q Did he ever tell you -- did he ever mention that it was
09:31AM 9 going to be difficult for him to qualify for a mortgage if he
09:32AM 10 was the owner of the Poke Shack?
09:32AM 11 A No.
09:32AM 12 MR. NAMMAR: Nothing further, Your Honor.
09:32AM 13 THE COURT: Anything further, Ms. Panagakos?
09:32AM 14 RECROSS-EXAMINATION
09:32AM 15 BY MS. PANAGAKOS:
09:32AM 16 Q Exhibit 8010-20, page two.
09:32AM 17 You testified that you don't know what this is about,
09:32AM 18 right?
09:32AM 19 A Correct.
09:32AM 20 Q So you don't know whether -- you have no knowledge what
09:32AM 21 Mr. Miske's motive was?
09:32AM 22 A Yes.
09:32AM 23 MS. PANAGAKOS: Could we publish it, please?
09:32AM 24 THE COURT: Yes. It's an admitted exhibit.
09:32AM 25 BY MR. NAMMAR:

09:32AM 1 Q And can we -- so when you said probably, that's just

09:32AM 2 speculation?

09:32AM 3 A Sorry, I'm not understanding your question.

09:33AM 4 Q You don't know what Mr. Miske's motive was in this text?

09:33AM 5 A No.

09:33AM 6 Q Okay. Can we turn to page one, please. And if we can

09:33AM 7 highlight items seven and eight.

09:33AM 8 But what you did know was that Mr. Miller was lying to

09:33AM 9 you, right?

09:33AM 10 A I'm reading the text message. Yes.

09:33AM 11 Q And that he asked you to lie to Mr. Miske?

09:33AM 12 A Yes.

09:33AM 13 MS. PANAGAKOS: Thank you.

09:33AM 14 THE COURT: Anything further?

09:33AM 15 MS. PANAGAKOS: Nothing further.

09:33AM 16 THE COURT: Ms. Tufele, you may step down.

09:33AM 17 The government may call its next witness.

09:43AM 18 --oo0oo--

09:43AM 19 MR. AKINA: Government calls Jonah Ortiz. Your Honor,

09:43AM 20 I'm told it might take a minute or two to bring him up.

09:43AM 21 THE COURT: All right.

09:48AM 22 MR. AKINA: I realize I was not fully clear of the

09:48AM 23 reason it might take a few minutes, because this is one of our

09:48AM 24 cooperating witnesses.

09:49AM 25 THE CLERK: Please raise your right hand.

09:49AM 1 JONAH ORTIZ,
09:49AM 2 called as a witness, having been first duly sworn, was examined
09:49AM 3 and testified as follows:
09:49AM 4 THE CLERK: Please state your full name, spelling your
09:49AM 5 last name for the record.
09:49AM 6 THE WITNESS: Jonah Ortiz, O-R-T-I-Z.
09:49AM 7 MR. AKINA: May I proceed, Your Honor?
09:49AM 8 THE COURT: Yes. Go ahead.
09:49AM 9 DIRECT EXAMINATION
09:49AM 10 BY MR. AKINA:
09:49AM 11 Q Good morning, Mr. Ortiz.
09:49AM 12 A Good morning.
09:49AM 13 Q How old are you?
09:49AM 14 A 45.
09:49AM 15 Q And are you currently incarcerated?
09:49AM 16 A Yeah. I'm at FDC.
09:49AM 17 Q And have you pled guilty to certain crimes?
09:49AM 18 A I have.
09:49AM 19 Q What are those specifically?
09:49AM 20 A Distribution of meth and kidnapping.
09:49AM 21 Q Did you enter into a plea agreement with the government
09:50AM 22 prior to pleading guilty?
09:50AM 23 A I did.
09:50AM 24 Q And are you testifying here today as part of that plea
09:50AM 25 agreement?

09:50AM 1 A I am.

09:50AM 2 Q I want to focus on the drug crime. That was conspiracy to
09:50AM 3 distribute and possess with the intent to distribute
09:50AM 4 methamphetamine? You have to answer for the court reporter.

09:50AM 5 A What was the question?

09:50AM 6 Q The crime that you pled guilty to, the drug one, that was
09:50AM 7 conspiracy to distribute and possess with intent to distribute
09:50AM 8 methamphetamine?

09:50AM 9 A Correct.

09:50AM 10 Q And prior to that conviction, have you had prior drug
09:50AM 11 related convictions?

09:50AM 12 A I have.

09:50AM 13 Q In 2004, you had another federal drug conviction; is that
09:50AM 14 correct?

09:50AM 15 A That's correct.

09:50AM 16 Q And that was also for methamphetamine?

09:50AM 17 A It was.

09:50AM 18 Q And have you sold drugs in the past?

09:51AM 19 A I have.

09:51AM 20 Q What types of drugs?

09:51AM 21 A Pretty much everything. Weed, heroin, coke, meth.

09:51AM 22 Q Have you ever used drugs in the past?

09:51AM 23 A I have.

09:51AM 24 Q Have you ever had a substance abuse problem?

09:51AM 25 A I have.

09:51AM 1 Q When did you first start using drugs?

09:51AM 2 A I'd say probably around 15. I started smoking weed and
09:51AM 3 then when I was 18, I think I smoked meth for the first time.
09:51AM 4 And then I started using OxyContin and opiates and stuff.

09:51AM 5 Q Did one of those opiates include heroin?

09:51AM 6 A Correct.

09:51AM 7 Q Fair to say you struggled with drugs for a significant
09:51AM 8 portion of your life?

09:51AM 9 A That's true.

09:51AM 10 Q And after that previous federal conviction in 2004, were
09:52AM 11 you released around 2014?

09:52AM 12 A I was.

09:52AM 13 Q Where did you go to, after leaving prison?

09:52AM 14 A After I got out immediately went to T.J. Mahoney's, which
09:52AM 15 is a halfway house.

09:52AM 16 Q Is that here in Hawaii?

09:52AM 17 A Yeah.

09:52AM 18 Q Were you on any type of supervised release at this point?

09:52AM 19 A Yeah. I was on a five-year probation supervised release.

09:52AM 20 Q So for those five years after 2014?

09:52AM 21 A Correct.

09:52AM 22 Q When you went to T.J. Mahoney, what type of place was
09:52AM 23 that?

09:52AM 24 A T.J. Mahoney was like -- I don't know, like -- maybe, like
09:52AM 25 a low income housing, kind of secured. It was -- I think it

09:53AM 1 was like two-bedroom small apartments, like two beds to each
09:53AM 2 room.

09:53AM 3 Q And while you were staying at T.J. Mahoney's, what were
09:53AM 4 you supposed to be doing?

09:53AM 5 A Well, everybody kind of has different -- what I was doing,
09:53AM 6 I was trying to get my -- I didn't have my license, I didn't
09:53AM 7 have my identification, I didn't have my birth certificate.
09:53AM 8 You know, so you have to get all of that and get a job and, you
09:53AM 9 know, start life over.

09:53AM 10 Q At this point in your life, were you sober?

09:53AM 11 A I was.

09:53AM 12 Q And for a period of time, were you able to maintain that
09:53AM 13 sobriety?

09:53AM 14 A I was.

09:53AM 15 Q While you were at T.J. Mahoney, were you able to -- or
09:53AM 16 after leaving it at some point, were you able to find some
09:54AM 17 employment?

09:54AM 18 A I did.

09:54AM 19 Q What type of employment did you do?

09:54AM 20 A My first job, I think I got a Speedy Shuttle. And then I
09:54AM 21 had another job at the Waikiki. It was a beach boy.

09:54AM 22 Q While you were at T.J. Mahoney, did you meet an individual
09:54AM 23 named Wayne Miller?

09:54AM 24 A I did.

09:54AM 25 Q And while you were at T.J. Mahoney, were you and Wayne

09:54AM 1 Miller particularly close at that point in time?

09:54AM 2 A At that point in time, no, we weren't. But that's when I
09:54AM 3 first became aware of him, I guess.

09:54AM 4 Q And as far as you could tell, what sort of things was
09:54AM 5 Wayne Miller doing at T.J. Mahoney?

09:54AM 6 A At that time, he was gone most of the time. He was out on
09:54AM 7 passes. I think he was trying to get his CDL.

09:54AM 8 Q Can you explain that, "being out on passes"?

09:54AM 9 A Yeah. Every day everybody gets approved to either go out
09:55AM 10 on pass to go to a class, or go look for work, or medical, or
09:55AM 11 whatever reason.

09:55AM 12 Q After leaving T.J. Mahoney, did you run into Wayne Miller
09:55AM 13 again at some point in time?

09:55AM 14 A I did.

09:55AM 15 Q How did that happen?

09:55AM 16 A I think it was through a mutual friend. It was just a
09:55AM 17 friend that I grew up with and he knew me real well. And I
09:55AM 18 believe it was someone that he did time with at another spot.
09:55AM 19 And you know, it was just a friendly introduction. It was not
09:56AM 20 like for any criminal purposes or anything like that. It was
09:56AM 21 just, you know, he thought we should meet.

09:56AM 22 Q And was this your formal introduction to Wayne Miller?

09:56AM 23 A Yeah.

09:56AM 24 Q And at this point when you first met up with him formally,
09:56AM 25 what types of things did you guys do together?

09:56AM 1 A In the beginning, we just kind of like hung out. I guess
09:56AM 2 we had a few things in common. You know I was raising bull
09:56AM 3 dogs. He was telling me he had some dogs. He would come over
09:56AM 4 to my house. I had a nice place. He was like, you know, he
09:56AM 5 told me he bought a house, and he was doing good. And it was
09:57AM 6 kind of like kicking back, not really doing much.

09:57AM 7 Q And at some point in time, did you start using drugs
09:57AM 8 again?

09:57AM 9 A I did.

09:57AM 10 Q And what about Wayne Miller? Could you tell if he was
09:57AM 11 using drugs at some point?

09:57AM 12 A He was also, so that's kind of like, I guess, we were
09:57AM 13 both, like, doing good at the same time, and then I think we
09:57AM 14 both started doing bad at the same time. So we had that in
09:57AM 15 common too.

09:57AM 16 Q And when you were doing bad, were the two of you doing
09:57AM 17 drugs?

09:57AM 18 A Yeah.

09:57AM 19 Q You mentioned that in the past you've supplied drugs to
09:57AM 20 others.

09:57AM 21 Did you ever supply drugs to Wayne Miller?

09:57AM 22 A Yeah, I did.

09:57AM 23 Q What types?

09:57AM 24 A At first, it was just weed and I think OxyContin.

09:58AM 25 Q Anything else?

09:58AM 1 A A few times I gave him some meth.

09:58AM 2 Q Would you two ever do drugs together?

09:58AM 3 A Yeah, we did quite a bit.

09:58AM 4 Q Now, you pled guilty to a drug related charge and a
09:58AM 5 kidnapping charge, correct?

09:58AM 6 A That's correct.

09:58AM 7 Q That kidnapping, do you remember that taking place in
09:58AM 8 2017?

09:58AM 9 A I do.

09:58AM 10 Q Now, prior to that kidnapping in 2017, were you doing
09:58AM 11 drugs with Wayne Miller?

09:58AM 12 A I was.

09:58AM 13 Q And had you had conversations with Wayne Miller prior to
09:58AM 14 that kidnapping?

09:58AM 15 A I did.

09:58AM 16 Q Did Wayne Miller ever mention an individual to you named
09:58AM 17 Michael Miske?

09:58AM 18 A He did.

09:58AM 19 Q And in that time prior to the kidnapping, did Wayne Miller
09:59AM 20 tell you what types of things he did for Michael Miske?

09:59AM 21 MR. KENNEDY: Objection; hearsay.

09:59AM 22 MR. AKINA: It's a prior consistent statement.

09:59AM 23 THE COURT: Overruled.

09:59AM 24 THE WITNESS: He didn't go into, like, detail, but
09:59AM 25 just basically similar crimes, I guess. You know, like he

09:59AM 1 mentioned he was kind of like a go-to guy. He did what needed

09:59AM 2 to be done, I guess.

09:59AM 3 BY MR. AKINA:

09:59AM 4 Q You said similar crimes. What did you mean by that?

09:59AM 5 A Well, relating to the kidnapping.

09:59AM 6 Q Was it your understanding that Wayne Miller did crimes on
09:59AM 7 behalf of Michael Miske?

09:59AM 8 MR. KENNEDY: Objection; hearsay.

09:59AM 9 THE COURT: Overruled. Go ahead.

09:59AM 10 THE WITNESS: Yes.

09:59AM 11 BY MR. AKINA:

09:59AM 12 Q And during these conversations, did you learn from Wayne
10:00AM 13 Miller whether or not he gained anything from Michael Miske?

10:00AM 14 MR. KENNEDY: Same objection, Your Honor.

10:00AM 15 THE COURT: Same ruling. Go ahead.

10:00AM 16 THE WITNESS: You know, over time, there is a few
10:00AM 17 times, like, he kind of bragged about some stuff that he had
10:00AM 18 gotten. One of them, I don't know, it was like a poke truck or
10:00AM 19 a food truck he loved. Another one, I think, was he used to
10:00AM 20 pull up to my house in like a four-door Dually truck. He
10:00AM 21 mentioned something about a Rolex. It was items that I
10:00AM 22 remember.

10:00AM 23 BY MR. AKINA:

10:00AM 24 Q Around this time, do you know what Wayne Miller did for
10:00AM 25 work?

10:00AM 1 A Yeah, he also -- at the time he was driving, I believe it
10:01AM 2 was for the Teamsters. He was driving A-list movie stars
10:01AM 3 around.

10:01AM 4 Q Do you know how he got that job?

10:01AM 5 A He told me that his friend Mike got him that job.

10:01AM 6 Q Again, prior to the kidnapping in 2017, did Wayne Miller
10:01AM 7 ever discuss with you whether he fell out of favor with
10:01AM 8 Michael Miske?

10:01AM 9 A Yeah, he did.

10:01AM 10 Q Tell us about that.

10:01AM 11 MR. KENNEDY: Objection; hearsay, Your Honor.

10:01AM 12 THE COURT: Overruled. Go ahead, sir.

10:01AM 13 THE WITNESS: I think it was, like, for two reasons,
10:01AM 14 mainly. Of what I gathered was, I don't know -- there was a
10:01AM 15 conversation we had one time. He was telling me about when he
10:01AM 16 got offered like \$250,000 to get rid of this kid, and I don't
10:02AM 17 think he did it, or, you know, that's what I gathered. And I
10:02AM 18 think another reason you say he fell out of favor was because
10:02AM 19 he had a drug problem, and people who he associated with didn't
10:02AM 20 fuck with drugs.

10:02AM 21 Q You mentioned that \$250,000 to get rid of a kid?

10:02AM 22 A Yeah.

10:02AM 23 Q What kid?

10:02AM 24 A It was --

10:02AM 25 MR. KENNEDY: Objection; hearsay, past narrative.

10:02AM 1 THE COURT: I didn't hear what the last thing was,
10:02AM 2 objection, hearsay what?

10:02AM 3 MR. KENNEDY: It's a past narrative.

10:02AM 4 THE COURT: Overruled. Go ahead.

10:02AM 5 THE WITNESS: He mentioned something about his
10:03AM 6 friend's son got into a car accident, and I guess the kid had
10:03AM 7 something to do with it or whatever, and he just wanted him
10:03AM 8 gone.

10:03AM 9 Q When you say his friend's son, are you talking about Wayne
10:03AM 10 Miller's friend's son or someone else's friend's son?

10:03AM 11 A Mike's friend's son.

10:03AM 12 Q Did Wayne Miller ever tell you where he had that
10:03AM 13 conversation with Michael Miske?

10:03AM 14 A Yeah, he said something about a hospital.

10:03AM 15 Q Now, have you ever met Michael Miske?

10:03AM 16 A I have not.

10:03AM 17 Q Have you ever had any direct interactions with him?

10:03AM 18 A No, sir.

10:03AM 19 Q So this kidnapping in 2017, how did that first come to
10:04AM 20 your attention?

10:04AM 21 A Wayne had brought it up on multiple occasions. I don't
10:04AM 22 remember exactly how it got brought up, but basically, you
10:04AM 23 know, we were both doing pretty bad at the time. And you know,
10:04AM 24 I was broke, he was broke; we had -- obviously we were addicted
10:04AM 25 to heroin. So, like, he just came and told me, he was like,

10:05AM 1 hey, I got this job we can do. I got this accountant that
10:05AM 2 supposedly, he is dirty and he stole some money. But it
10:05AM 3 wasn't -- it was just like a quick conversation, you know. It
10:05AM 4 was -- he just brought it up as an idea, and, you know, it
10:05AM 5 wasn't like anything that I took seriously at first.

10:05AM 6 Q So when at first it was brought up by Wayne Miller, did
10:05AM 7 you immediately agree?

10:05AM 8 A No, because I mean, like I said, it was just something
10:05AM 9 that came up and it was kind of like, it's just not my sort of
10:05AM 10 thing. Honestly, I didn't think too much about it.

10:05AM 11 Q And it it sounds like there was more than one conversation
10:05AM 12 with Wayne Miller about this?

10:06AM 13 A Yeah, you know, he just kept on bringing it up, like
10:06AM 14 that's a possibility. And then I think at one point, I'm like,
10:06AM 15 screw it. Let's do it. And then I would be like, so now, the
10:06AM 16 time would pass and I would be like, so, you know, what's up
10:06AM 17 with that job? And he would be like, I'll let you know. At
10:06AM 18 one point he just -- I think we were at my friend's house in
10:06AM 19 the apartment, and all of a sudden, it became kind of like
10:06AM 20 urgent, like we had to do it soon.

10:06AM 21 Q Who was urgent about it? You or Wayne Miller?

10:06AM 22 A Wayne.

10:06AM 23 Q So in these discussions, did Wayne Miller tell you whether
10:07AM 24 or not you would get paid anything for helping him?

10:07AM 25 A He mentioned that he took a hundred thousand, so that we

10:07AM 1 would split the money.

10:07AM 2 Q Who took a hundred thousand?

10:07AM 3 A He said that the accountant took a hundred thousand.

10:07AM 4 Q And so when you split the money, that would be -- how

10:07AM 5 would that be split?

10:07AM 6 A I guess 50, 50.

10:07AM 7 Q That's 50,000 for you and 50,000 for Wayne Miller?

10:07AM 8 A Correct.

10:07AM 9 Q You mentioned that Wayne Miller said that he had gotten

10:07AM 10 this job referring to this -- getting this money from this

10:07AM 11 accountant?

10:07AM 12 A Yeah.

10:07AM 13 Q Did he ever mention to you who he was doing this for?

10:07AM 14 A Yeah, he told me a lawyer. He was like, I got a lawyer

10:07AM 15 friend.

10:07AM 16 Q Did you believe him when he said it was a lawyer?

10:07AM 17 A No, I didn't.

10:07AM 18 Q Why not?

10:07AM 19 A Well, that's just his style. Like, you know, if I'm going

10:08AM 20 to give him -- like, he is not going to tell me who he is going

10:08AM 21 to sell the drugs to or who he is going to buy the drugs from.

10:08AM 22 He is going to usually keep that person, you know, from being

10:08AM 23 known.

10:08AM 24 Q So he wouldn't always give you all the details on

10:08AM 25 different things; is that fair?

10:08AM 1 A Correct.

10:08AM 2 Q So sounds like you knew that you were not getting the

10:08AM 3 whole truth from Wayne Miller about this particular job?

10:08AM 4 A Yes, that's correct.

10:08AM 5 Q Were you still comfortable going forward knowing that?

10:08AM 6 A Yeah. I mean, at the time, I was -- you know, I was

10:08AM 7 pretty desperate. And you know, I knew who he associated with,

10:09AM 8 so I felt it was credible.

10:09AM 9 Q What do you mean by that, who he associated with?

10:09AM 10 A I mean, you know, I know who his friends are, and it was

10:09AM 11 just that I didn't think that it was a made-up story.

10:09AM 12 Q So after you agreed to do this, to get this money back

10:09AM 13 from the accountant with Wayne Miller, did Wayne Miller tell

10:09AM 14 you any steps he had taken in preparation for this?

10:09AM 15 A He told me that he has already done, like, surveillance on

10:09AM 16 the guy. Pretty much knew, I guess, where his office was. He

10:10AM 17 explained where his home was. I don't remember the exact

10:10AM 18 details, but it was just basically that, you know, that he has

10:10AM 19 already done, like, prior surveillance on the guy.

10:10AM 20 Q And had you ever kidnapped anyone prior to this?

10:10AM 21 A I have not.

10:10AM 22 Q What did you do with Wayne Miller, if anything, to

10:10AM 23 prepare?

10:10AM 24 A There was times when we just sat outside of his office, on

10:11AM 25 the street that I believed to be his office.

10:11AM 1 Q When you say "his office," who are you referring to?

10:11AM 2 A The accountant.

10:11AM 3 Q Was that one time or multiple times?

10:11AM 4 A No, there was multiple times. There was another time when
10:11AM 5 we sat across on the opposite side of the street in a covered
10:11AM 6 parking garage, like, on the -- I think the top floor. So it
10:11AM 7 was, like, higher up so you can kind of see the whole building
10:11AM 8 and the road and everything.

10:11AM 9 Q Do you recall anything about the accountant's -- the
10:11AM 10 building where his office was located in?

10:12AM 11 A Yeah. It was above -- I think it's above a candy store or
10:12AM 12 some kind of store. I remember that building because, like I
10:12AM 13 said, a long time ago, I went in there one time because I think
10:12AM 14 I was trying to drive for Uber or something like that. I think
10:12AM 15 Uber used to have an office in there.

10:12AM 16 Q Besides staking out the accountant's place of work, did
10:12AM 17 you do anything else to prepare?

10:12AM 18 A I did see Wayne -- I'm very sure he put a tracker on his
10:12AM 19 car. I don't remember exactly when, but before we did the
10:12AM 20 kidnapping, he went into -- I guess he went into a meeting with
10:13AM 21 somebody at Mike's business, and I mean, after he had that
10:13AM 22 meeting, that's when the tracking devices appeared. So I just
10:13AM 23 assumed it probably came from there, but I was just guessing.

10:13AM 24 Q You told us you never met Mr. Miske before and you
10:13AM 25 mentioned Mike's business.

10:13AM 1 Did you have some understanding of what Michael Miske
10:13AM 2 did work-wise or what he was involved in?
10:13AM 3 A I mean, he is a pretty known guy. Even before I knew
10:13AM 4 Wayne, I went to the M Nightclub and, you know, everybody kind
10:14AM 5 of knows who he is.
10:14AM 6 Q And this particular business where you said Wayne Miller
10:14AM 7 went to, what business was that?
10:14AM 8 A The pest control.
10:14AM 9 Q That Kama'aina Termite and Pest Control?
10:14AM 10 A Correct.
10:14AM 11 Q Now, did you go into Kama'aina Termite and Pest Control
10:14AM 12 with Wayne Miller?
10:14AM 13 A I did not.
10:14AM 14 Q So you stayed outside?
10:14AM 15 A Correct.
10:14AM 16 Q And you said that he went in there to meet somebody?
10:14AM 17 A Yes.
10:14AM 18 Q At that point in time, did you know -- who were you aware
10:14AM 19 of that Wayne Miller knew that was associated with Kama'aina
10:14AM 20 Termite and Pest Control?
10:14AM 21 A At that time and still, only Mike. I knew that was his
10:14AM 22 buddy. He had mentioned that he even had a baby shower at his
10:14AM 23 club one time. I knew they were friends.
10:14AM 24 Q You said a baby shower?
10:15AM 25 A Yes.

10:15AM 1 Q So Wayne Miller goes into Kama'aina Termite and Pest

10:15AM 2 Control, and he comes out.

10:15AM 3 About how long was he in there for?

10:15AM 4 A He wasn't in there for that long.

10:15AM 5 Q Minutes, hours?

10:15AM 6 A I would say less than 30 minutes.

10:15AM 7 Q And after Wayne Miller came back from Kama'aina Termite

10:15AM 8 and Pest Control, what, if anything, did you observe?

10:15AM 9 A That's when I observed what I believed to be tracking

10:15AM 10 devices. It's like a black egg. It had -- magnetized tracking

10:15AM 11 devices.

10:15AM 12 Q Did you ever use a tracking device before?

10:15AM 13 A I have not.

10:15AM 14 Q How did you know what a tracking device looked like?

10:15AM 15 A I've seen them on, like, Amazon.

10:16AM 16 Q You previously looked up tracking devices on Amazon?

10:16AM 17 A Yeah.

10:16AM 18 Q So anything else that you did to prepare for this

10:16AM 19 kidnapping?

10:16AM 20 A That's pretty much it.

10:16AM 21 Q How were you going to get in touch with this accountant?

10:16AM 22 A So Wayne had his phone number, and I remember him -- he

10:16AM 23 called him a couple of times. Ultimately he set an appointment

10:17AM 24 to meet him at Fisherman's Wharf.

10:17AM 25 Q At Fisherman's Wharf, what was your guys's plan?

10:17AM 1 A Oh, yeah. Also prior to the kidnapping, I was at an
10:17AM 2 antique store and I noticed, you know, I think they were like
10:17AM 3 expired police badges. One was an old fireman's badge. But I
10:17AM 4 think -- we went back, I told Wayne about it and he ended up
10:17AM 5 buying the badges. So I guess the plan was when the accountant
10:18AM 6 pulled up, we were going to act like we were police officers.
10:18AM 7 Q You mentioned that Wayne Miller had called the accountant.
10:18AM 8 Did you ever call the accountant?
10:18AM 9 A Not that I remember. I may have, because, I mean, there
10:18AM 10 was more than one call, you know. I honestly don't remember
10:18AM 11 speaking to him.
10:18AM 12 Q Did you go by any other names besides Jonah?
10:18AM 13 A Yeah, James.
10:18AM 14 Q Do you remember ever calling up the accountant posing as
10:18AM 15 James, or using that name James?
10:18AM 16 A Honestly, I don't remember.
10:19AM 17 THE COURT: Mr. Akina, is now a good time?
10:19AM 18 MR. AKINA: Yes. We can break here, Your Honor.
10:19AM 19 THE COURT: We are at 10:20. We have been going for
10:19AM 20 about an hour and 45 minutes. Let's go ahead and take our first
10:19AM 21 break of the day. As we go to break, I remind our jurors to
10:19AM 22 please refrain from discussing the substance of this case with
10:19AM 23 anyone, including each other; to refrain from accessing any
10:19AM 24 media or other accounts of this case that may be out there; and
10:19AM 25 finally, please do not conduct any independent investigation

10:19AM 1 into the facts, circumstances, or persons involved.

10:19AM 2 Let's take about a 15-minute break and we will resume

10:19AM 3 with the direct of Mr. Ortiz.

10:20AM 4 (Proceedings were recessed at 10:20 a.m. to 10:42

10:42AM 5 a.m.)

10:42AM 6 THE COURT: Mr. Akina, you may resume your direct.

10:42AM 7 BY MR. AKINA:

10:42AM 8 Q Thank you, Your Honor.

10:42AM 9 Mr. Ortiz, you told us that the plan was to meet with

10:42AM 10 the accountant at Fisherman's Wharf.

10:42AM 11 Why did you and Wayne Miller pick Fisherman's Wharf?

10:42AM 12 A It was a spot where we believed to be pretty secluded,

10:42AM 13 like, no cameras.

10:42AM 14 Q You mentioned that the plan when the accountant arrived

10:43AM 15 was to pose as police officers.

10:43AM 16 How were you and Wayne Miller dressed?

10:43AM 17 A Pretty much all black.

10:43AM 18 Q So not in police uniforms, but you wore all black?

10:43AM 19 A Yes, correct. Wayne had a Crown Vic, which was an old

10:43AM 20 police vehicle or something that he had picked up from the

10:43AM 21 auction. So, you know, it looked like a cop car.

10:43AM 22 Q Do you remember what color it was?

10:43AM 23 A Yeah, it was a black Crown Vic.

10:43AM 24 Q And what was the plan -- how did that play into the plan?

10:43AM 25 A The plan was when the accountant pulled up, just pretend

10:44AM 1 to be cops and just arrest him.

10:44AM 2 Q And would you try to put him into the Crown Vic if you had

10:44AM 3 to?

10:44AM 4 A Yeah. That was the plan.

10:44AM 5 Q So about what time of day was this -- well, eventually did

10:44AM 6 you two meet up with the accountant?

10:44AM 7 A We did.

10:44AM 8 Q And that's at Fisherman's Wharf?

10:44AM 9 A It is.

10:44AM 10 Q And about what time of day was this?

10:44AM 11 A It was still daylight. I don't know exactly what time.

10:44AM 12 Q Can you describe the vehicle the victim was driving?

10:44AM 13 A It was a gray -- it wasn't a car; it wasn't a big SUV. It

10:44AM 14 was a mid sized four-door.

10:44AM 15 Q A mid sized SUV?

10:44AM 16 A Correct.

10:44AM 17 Q So when the victim parked -- the accountant parked, where

10:44AM 18 were you in relation to his car?

10:45AM 19 A I'm on the passenger -- I'm on the driver side of his car,

10:45AM 20 the passenger side of the Crown Vic. He pulled up on the

10:45AM 21 passenger side of the Crown Vic.

10:45AM 22 Q So the accountant pulled up on your side?

10:45AM 23 A Um-hm.

10:45AM 24 Q So were you closest to him between you and Wayne Miller?

10:45AM 25 A I was.

10:45AM 1 Q And can you describe the accountant, how he looked?

10:45AM 2 A He was like an older Asian; kind of salt and pepper, black

10:45AM 3 hair, stocky, healthy looking.

10:45AM 4 Q About how tall?

10:45AM 5 A A few feet shorter than me. I'm six feet.

10:45AM 6 Q Few feet?

10:45AM 7 A I mean, you know, a foot shorter.

10:45AM 8 Q So he was about five feet?

10:46AM 9 A Yeah.

10:46AM 10 Q And so what happens after the accountant arrives?

10:46AM 11 A When he got out of the vehicle, both said, you know,

10:46AM 12 like -- or I said, "Freeze, police, you are under arrest,"

10:46AM 13 hoping that he would just kind of like go along with it, but he

10:46AM 14 didn't. He kind of -- I don't think he was fooled that we

10:46AM 15 weren't police because he was definitely -- he was resisting.

10:46AM 16 Q Did you do anything physically to try to --

10:47AM 17 A Yeah. I grabbed him and I tried, you know, I tried

10:47AM 18 pinning him down. And I think ultimately, like, it took the

10:47AM 19 both of us to get him in the vehicle.

10:47AM 20 Q And was he restrained in any way?

10:47AM 21 A After we got him in the vehicle, again, he's -- you know,

10:47AM 22 he's definitely fighting the whole way. So after we got him in

10:47AM 23 there and we got him pinned down, we handcuffed him. And after

10:47AM 24 we handcuffed him, we stuck a black bag over his head and duct

10:48AM 25 taped it to stay on.

10:48AM 1 Q And who duct taped it?

10:48AM 2 A Wayne had the duct tape. I mean, we were both doing it,
10:48AM 3 you know.

10:48AM 4 Q And how did you duct tape it to get it secured on?

10:48AM 5 A Just around his neck area.

10:48AM 6 Q Did anyone strike the accountant?

10:48AM 7 A Yeah. Wayne struck him. He elbowed him at first. I
10:48AM 8 don't remember how it went or who was driving first, because at
10:49AM 9 some point, I was driving and at some point, he was driving. I
10:49AM 10 do remember at one point I think when I was driving, Wayne had
10:49AM 11 a gun. And I believe he was striking the accountant, you know,
10:49AM 12 and threatening to shoot him. We were basically trying to get
10:49AM 13 him to tell us where the money was, or come up with the money,
10:49AM 14 or, you know, just, that was like the repeat comment, you know.
10:49AM 15 "Tell us where the money is."

10:50AM 16 He just refused to admit to even knowing what we were
10:50AM 17 talking about. You know, he was like, what money? And Wayne
10:50AM 18 was telling him, "you know the money. Just tell us where the
10:50AM 19 money is."

10:50AM 20 Q So sounds like you two were driving him around after
10:50AM 21 initially handcuffing him and putting him into the vehicle?

10:50AM 22 A Correct.

10:50AM 23 Q And you mentioned that Wayne Miller used a gun to strike
10:50AM 24 the accountant.

10:50AM 25 Did he do anything else with the gun that you

10:50AM 1 observed?

10:50AM 2 A He just pointed it at him, and threatened to shoot him.

10:50AM 3 Q Did anyone threaten to kill the accountant when trying to
10:50AM 4 get this money?

10:50AM 5 A I mean, yeah, that's pretty much -- when he was
10:51AM 6 threatening to shoot him, he was threatening to kill him.

10:51AM 7 Q While you two were driving the accountant around, were you
10:51AM 8 continuously driving the entire time that you had him?

10:51AM 9 A No. We pulled over a few -- I remember -- I know we had
10:51AM 10 him for -- I don't know exactly how long, I know it was, I
10:51AM 11 think, up to, like, five or six hours. So I honestly don't --
10:51AM 12 I remember a few stops. One of the stops stuck out to me
10:51AM 13 because that was where we were staying at the time. It was at
10:51AM 14 a friend's house on one of those little side streets. I think
10:52AM 15 off of Piikoi.

10:52AM 16 Q Did you go into the house?

10:52AM 17 A No.

10:52AM 18 Q Stayed out in the street in the car?

10:52AM 19 A Yeah, we were just out on the street and pulled over. I
10:52AM 20 mean, when we pulled over, we were using drugs as well or
10:52AM 21 smoking heroin.

10:52AM 22 Q You were smoking?

10:52AM 23 A I was shooting heroin. Wayne was smoking heroin.

10:52AM 24 Q What about any other stops?

10:52AM 25 A The other one I remember was at the top of Ward. I just

10:52AM 1 remember Wayne saying something about going to meet his lawyer
10:53AM 2 friend or something, but anyway he disappeared for a little
10:53AM 3 bit.
10:53AM 4 Q You said at the top of Ward.
10:53AM 5 Is that closer to the mountains or the ocean?
10:53AM 6 A What do you mean?
10:53AM 7 Q You said that you stopped at the top of Ward Avenue. Is
10:53AM 8 that in the direction of the mountains or the ocean?
10:53AM 9 A Yeah, mountains.
10:53AM 10 Q And any other stops?
10:53AM 11 A At this park.
10:53AM 12 Q Which park?
10:53AM 13 A I think it's Sheridan Park.
10:53AM 14 Q Did you go to Sheridan Park just one time?
10:53AM 15 A No, there was a few times.
10:53AM 16 Q A few stops at Sheridan Park?
10:53AM 17 A Yeah.
10:53AM 18 Q Thinking of the final stop during this several-hour
10:53AM 19 period, where was that, that you recall?
10:53AM 20 A So the last would have been on the Piikoi. If you are
10:54AM 21 looking up towards the mountain, Piikoi being on the left,
10:54AM 22 Walmart being on the right, we were on the other side.
10:54AM 23 Q Other side of what?
10:54AM 24 A Of Piikoi. The park.
10:54AM 25 Q Is that Sheridan Park?

10:54AM 1 A Correct.

10:54AM 2 Q And what, if anything, happened there?

10:54AM 3 A This was what I believed to be towards the end. And we

10:54AM 4 were just like, you know, after hours of nothing -- of him not

10:55AM 5 admitting to having any money, you know, it was kind of going

10:55AM 6 nowhere, so it was just -- you know, like, what are we going to

10:55AM 7 do? Like, what's the plan? And then that's when he was like,

10:55AM 8 fuck 'em. I'm going to go call Bro and find out. And he kind

10:55AM 9 of like caught himself a little bit and he was like oh, no, I'm

10:55AM 10 going to call my lawyer friend, and see what we are going to

10:55AM 11 do.

10:55AM 12 Q And when Wayne Miller said he was going to call Bro, did

10:55AM 13 you know who that was a reference to?

10:55AM 14 A I just know in past conversations, like, he told me, like,

10:56AM 15 that's what they called him.

10:56AM 16 Q Called who?

10:56AM 17 A Mike.

10:56AM 18 Q Previous conversations, Wayne Miller had referred to

10:56AM 19 Michael Miske as Bro?

10:56AM 20 A Yeah. I guess that was like their code name or something,

10:56AM 21 I don't know.

10:56AM 22 Q You said that Wayne Miller caught himself after he said

10:56AM 23 Bro.

10:56AM 24 What did you mean by that?

10:56AM 25 A Well, I just know that he -- it felt like he kind of

10:56AM 1 slipped up or, you know, it was like he caught himself. It
10:56AM 2 wasn't like, I don't know, like he wasn't supposed to say that
10:56AM 3 or something, you know.

10:56AM 4 Q And then he followed up by correcting himself and saying
10:56AM 5 lawyer friend?

10:56AM 6 A Correct.

10:56AM 7 Q Did you think he was being truthful about the lawyer
10:57AM 8 friend reference?

10:57AM 9 A I mean, I never did buy that whole story the whole time,
10:57AM 10 you know, but I wasn't, like, really concerned about that. It
10:57AM 11 wasn't really important to me at the time.

10:57AM 12 Q So after Wayne Miller said he was going to step out and
10:57AM 13 call Bro, what did he do?

10:57AM 14 A He was gone for a little while. I don't remember how long
10:57AM 15 he was gone, but ultimately he came back, and I guess the
10:57AM 16 decision was take him back to his car.

10:57AM 17 Q Did the two of you discuss doing anything else with the
10:57AM 18 accountant besides taking him back?

10:57AM 19 A I mean, yeah, of course. The conversation came up of
10:58AM 20 getting rid of him. Killing him. Thank God that didn't
10:58AM 21 happen. Yeah, so that's what happened.

10:58AM 22 Q Now, during these multiple stops that you described, at
10:58AM 23 any of these stops, did a third person ever join you and Wayne
10:58AM 24 Miller?

10:58AM 25 A Not that I recall.

10:58AM 1 Q Did you ever see or hear a third person approach the Crown
10:58AM 2 Vic during those stops?

10:58AM 3 A I didn't, no.

10:58AM 4 Q Do you know someone named Preston Kimoto?

10:58AM 5 A I don't.

10:58AM 6 Q So after the two of you decided to return the accountant,
10:59AM 7 where did you take him?

10:59AM 8 A So after the park we just -- we left. And before we
10:59AM 9 reached his car at Fisherman's Wharf, I think we took his
10:59AM 10 wallet. We might have taken his wallet at first, I don't know,
10:59AM 11 but I remember basically all he had was -- like, I think it was
10:59AM 12 under a hundred dollars. It was, like, 40 bucks, I think, and
10:59AM 13 a credit card or debit card. And either me or Wayne told him,
10:59AM 14 you know, make sure that he waits a while before he calls in
11:00AM 15 the car and obviously, don't contact police.

11:00AM 16 Q What about the handcuffs?

11:00AM 17 A I think we put them -- at some point, I want to say, ended
11:00AM 18 up having zip ties on him, I think. But anyway, at the end, we
11:00AM 19 took everything off and we left him at his car.

11:00AM 20 Q Do you ever get paid for this?

11:00AM 21 A I did not.

11:01AM 22 Q You mentioned that leading up to this, when you agreed to
11:01AM 23 do this kidnapping, I might be paraphrasing, you were at a low
11:01AM 24 point.

11:01AM 25 Why did you agree to do this?

11:01AM 1 A Like I said, you know, I just went from, like, nice little
11:01AM 2 three bedroom house, trying to open up a couple of businesses,
11:01AM 3 wife, I was going to start a family, to ultimately homeless,
11:01AM 4 which I had never been in my life. It just happened so fast.

11:01AM 5 Q Did any of those circumstances excuse what you did?

11:02AM 6 A Absolutely not. I mean, it was inexcusable.

11:02AM 7 Q You mentioned that you and Wayne Miller were -- that you
11:02AM 8 were shooting up heroin during this kidnapping.

11:02AM 9 You said Wayne Miller was also smoking heroin as well?

11:02AM 10 A Yeah. He didn't inject. I did.

11:02AM 11 Q And for you personally, how does heroin affect you?

11:02AM 12 A You know, there is times when you inject it, there would
11:02AM 13 be moments where like -- usually at the initial moments, you
11:02AM 14 would be kind of like you're sedated, almost. You know, you
11:02AM 15 just kind of like nod out and maybe fall asleep a little bit.
11:02AM 16 And then -- there is times that it wears off. Then you're up
11:03AM 17 and you can focus.

11:03AM 18 Q So the time -- did that happen to you during this -- the
11:03AM 19 kidnapping? Did you --

11:03AM 20 A Yeah. I mean, that's the thing with heroin. It's like
11:03AM 21 you got to have it every so often, or you, like, you physically
11:03AM 22 get ill, like you have -- like, it's painful. So yeah,
11:03AM 23 throughout the kidnapping there was times it did that.

11:03AM 24 Q Meaning you felt ill so you needed to use it?

11:03AM 25 A Correct.

11:03AM 1 Q And after you used it, you mentioned that sometimes you

11:03AM 2 would nod off.

11:03AM 3 So fair to say there are times you nodded off during

11:03AM 4 the kidnapping?

11:03AM 5 A Yeah, absolutely.

11:03AM 6 Q But during the periods of time when you are awake and not

11:03AM 7 nodding off, did heroin affect your ability to remember?

11:04AM 8 A You got a buzz, but you're able to do things.

11:04AM 9 Q So your memories are pretty accurate for the periods of

11:04AM 10 time that you are awake?

11:04AM 11 A Correct.

11:04AM 12 Q Did Wayne Miller -- you mentioned that you sold Wayne

11:04AM 13 Miller oxy as well, right?

11:04AM 14 A Yes.

11:04AM 15 Q Did he primarily use that with you or heroin with you?

11:04AM 16 A No, in the beginning it was all oxys. But then it

11:04AM 17 switched over to strictly heroin.

11:04AM 18 Q And you don't know what he did when he wasn't with you,

11:04AM 19 right?

11:04AM 20 A Right.

11:04AM 21 MR. AKINA: Could we show the witness Exhibit 5-1

11:04AM 22 which is in evidence, and this is from our initial exhibit

11:04AM 23 list, Your Honor. Permission to publish.

11:05AM 24 THE COURT: Yes, go ahead.

11:05AM 25 BY MR. AKINA:

11:05AM 1 Q Do you see the area on this map where Fisherman's Wharf
11:05AM 2 was where you met with the accountant?

11:05AM 3 A I do.

11:05AM 4 Q Can you circle that with your finger? Just use your
11:05AM 5 finger on the screen.

11:05AM 6 A Somewhere over here.

11:05AM 7 MR. AKINA: Could we go to Exhibit 5-2A please, which
11:05AM 8 is also in evidence and from that same exhibit list.

11:05AM 9 THE COURT: Yes, go ahead.

11:05AM 10 MR. AKINA: Permission to publish this.

11:05AM 11 THE COURT: Yes.

11:05AM 12 BY MR. AKINA:

11:05AM 13 Q Do you see this red dot towards the top of the screen by
11:05AM 14 Queen Street?

11:05AM 15 A Uh-huh.

11:05AM 16 Q What business is in that general area?

11:06AM 17 A That's the termite pest control.

11:06AM 18 Q And is that where Wayne Miller went to before he came out
11:06AM 19 with the trackers?

11:06AM 20 A He did.

11:06AM 21 Q Do you mind leaning in towards the mic?

11:06AM 22 A Yeah, it is.

11:06AM 23 Q And do you see the area where the accountant's office was
11:06AM 24 that you staked out with Wayne Miller?

11:06AM 25 A Yes, I do. It says Herbox Spa. And then right across the

11:06AM 1 street is that parking.

11:06AM 2 Q So it's in the bottom right-hand corner of the map?

11:06AM 3 A Correct, yes.

11:06AM 4 MR. AKINA: And then -- we can take this down. Can we

11:06AM 5 show the witness Exhibit 5-3, which is also in evidence.

11:06AM 6 THE COURT: Yes. Go ahead.

11:06AM 7 BY MR. AKINA:

11:06AM 8 Q Do you see Sheridan Park here?

11:06AM 9 A Yeah. It's got the red dot on my right.

11:07AM 10 Q If we could zoom in on that area of the map, please. You

11:07AM 11 mentioned that there was at one point you stopped near a house

11:07AM 12 that you were staying at.

11:07AM 13 Did you see where that is?

11:07AM 14 A Yeah. I think it's right there.

11:07AM 15 Q On Hoolai Street?

11:07AM 16 A Yes.

11:07AM 17 Q And then that stop that you are describing where Wayne

11:07AM 18 Miller stepped out and made a call to Bro, what part of

11:07AM 19 Sheridan Park was that?

11:07AM 20 A Like, the bottom right-hand corner.

11:07AM 21 Q Bottom right-hand corner?

11:07AM 22 A Of Sheridan Community Park.

11:07AM 23 MR. AKINA: We can take this exhibit down. Could we

11:07AM 24 show the witness Exhibit 5-13, also in evidence.

11:07AM 25 THE COURT: Yes, go ahead.

11:07AM 1 BY MR. AKINA:

11:07AM 2 Q Do you recognize this?

11:08AM 3 A I do. This is where we told the accountant to meet us.

11:08AM 4 Q This is Fisherman's Wharf?

11:08AM 5 A It is.

11:08AM 6 Q And the area where you met up with the accountant, is it

11:08AM 7 more to the left or the right or the front?

11:08AM 8 A I remember the fence line more on the right because the

11:08AM 9 water was on the left. I remember when we first went in there,

11:08AM 10 we kind of pulled up towards the water area and we moved a

11:08AM 11 couple of times. And we ended up settling somewhere on the

11:08AM 12 right towards the fence.

11:08AM 13 Q Will you go to Exhibit 5-15, also in evidence.

11:08AM 14 Do you see that fence line area?

11:08AM 15 A Yeah. It's right there to the right.

11:09AM 16 Q Could we zoom in on this right corner of the screen,

11:09AM 17 please.

11:09AM 18 So this is the fence line you are talking about?

11:09AM 19 A Correct.

11:09AM 20 Q We can take this exhibit down.

11:09AM 21 After the kidnapping, did you continue to hang out

11:09AM 22 with Wayne Miller?

11:09AM 23 A Immediately, like, for a time.

11:09AM 24 Q For a time you did or did not?

11:09AM 25 A For a time I did, and then I think ultimately, I went off

11:10AM 1 on my own. I saw that hanging out with him really wasn't going
11:10AM 2 anywhere. So I just went and did my own thing.

11:10AM 3 Q At some point after -- I'm going to go forward in time to
11:10AM 4 2018. And leading up to that, did you deal any drugs with
11:10AM 5 Wayne Miller?

11:10AM 6 A I did.

11:10AM 7 Q Also in 2018?

11:10AM 8 A Correct.

11:10AM 9 Q Did that include methamphetamine?

11:10AM 10 A It did.

11:10AM 11 Q On August 8th of 2018, were you arrested?

11:10AM 12 A I was.

11:10AM 13 Q And what was that for?

11:10AM 14 A It was for conspiracy to sell meth.

11:11AM 15 Q That's the kidnapping and the drug charge that you pled
11:11AM 16 guilty to, are you referring to the drug charge?

11:11AM 17 A Correct.

11:11AM 18 Q And can you tell the jury what you did in relation to
11:11AM 19 that?

11:11AM 20 A Well, I immediately -- I didn't want to go to prison, so I
11:11AM 21 immediately cooperated with the government.

11:11AM 22 Q And so the day you were arrested, did you make a statement
11:11AM 23 to law enforcement?

11:11AM 24 A I did.

11:11AM 25 Q And you told them you were selling drugs, essentially?

11:12AM 1 A Yeah, I did.

11:12AM 2 Q You didn't mention the kidnapping at that point, right?

11:12AM 3 A No, I didn't.

11:12AM 4 Q That same day you were arrested, did you let the law

11:12AM 5 enforcement search your car?

11:12AM 6 A I did.

11:12AM 7 Q And what are some things that were inside your car that

11:12AM 8 day?

11:12AM 9 A A gun, some oxy, some pills, and some heroin, some ice.

11:12AM 10 Q You had about a half pound of methamphetamine?

11:12AM 11 A Sounds right.

11:12AM 12 Q You mentioned you had a gun?

11:12AM 13 A Um-hm.

11:12AM 14 Q The gun had ammunition?

11:12AM 15 A It did.

11:12AM 16 Q Were you aware that because you were -- you had that prior

11:12AM 17 felony conviction, you weren't allowed to possess a gun or

11:12AM 18 ammunition?

11:12AM 19 A Um-hm, yes, that's true.

11:12AM 20 Q And this all happened -- the kidnapping, the drug dealing,

11:13AM 21 and possessing the gun and drugs, that all happened while you

11:13AM 22 were on supervised release, right?

11:13AM 23 A Yeah, it did.

11:13AM 24 Q Now, specifically the drug count that you pled guilty to,

11:13AM 25 did that involve you getting drugs and sending them to Hawaii?

11:13AM 1 A Yeah, it did.

11:13AM 2 Q Tell us a little bit about that. I'll rephrase the
11:13AM 3 question.

11:13AM 4 How did you do that?

11:13AM 5 A Used an address -- one of the places -- I used the address
11:13AM 6 at the methadone clinic because they offered an address for, I
11:14AM 7 guess, their clients, because a majority of their clients, they
11:14AM 8 probably don't have an address. So I used that address to send
11:14AM 9 boxes, and that's where I would receive it.

11:14AM 10 Q So you mailed boxes of drugs to Hawaii?

11:14AM 11 A Correct.

11:14AM 12 Q And you'd mail ten ounces of meth on one occasion?

11:14AM 13 A Correct.

11:14AM 14 Q And about a pound of meth on another occasion?

11:14AM 15 A Correct.

11:14AM 16 Q With the -- so you told us that you entered into a
11:14AM 17 cooperation agreement eventually, right?

11:14AM 18 A Um-hm.

11:14AM 19 Q And as part of that cooperation, did you provide testimony
11:15AM 20 in the grand jury?

11:15AM 21 A I did.

11:15AM 22 Q Have you already been sentenced for the kidnapping and the
11:15AM 23 drug count that you pled guilty to?

11:15AM 24 A I have.

11:15AM 25 Q And some counts were dismissed against you as part of that

11:15AM 1 plea agreement?

11:15AM 2 A Correct.

11:15AM 3 Q Were you also separately -- were you given any punishment
11:15AM 4 because you committed crimes while you were out on supervised
11:15AM 5 release?

11:15AM 6 A I have, yeah.

11:15AM 7 Q That was a separate sentence?

11:15AM 8 A It was, yeah.

11:15AM 9 Q Did you receive any type of benefit for your cooperation
11:15AM 10 when it came time for sentencing?

11:15AM 11 A I got a two point reduction.

11:15AM 12 Q And explain how you understood that worked.

11:15AM 13 A So I guess sentencing is based off of guidelines which is
11:16AM 14 criminal history, which is one category that goes left or
11:16AM 15 right, and then the offense level, which goes from 1 to 40 or
11:16AM 16 whatever. So you get a couple of points for acceptance, and
11:16AM 17 typically, I guess if you cooperate and it's legitimate, they
11:16AM 18 tend to give you a couple more points.

11:16AM 19 Q So was it your understanding that the government had to
11:16AM 20 make a motion first for that reduction in points?

11:16AM 21 A Correct.

11:16AM 22 Q And ultimately, who was the person who decided whether or
11:16AM 23 not you get any credit for that?

11:16AM 24 A It would be the judge.

11:16AM 25 Q That was the judge who sentenced you?

11:16AM 1 A Correct.

11:16AM 2 Q So are you hoping to gain anything by testifying here
11:16AM 3 today since you've already been sentenced?

11:16AM 4 A Yeah, that would be great.

11:17AM 5 Q What are you hoping to gain?

11:17AM 6 A I'm hoping to get a reduced sentence.

11:17AM 7 Q You're hoping to get an additional benefit?

11:17AM 8 A Correct.

11:17AM 9 Q Have any promises been made to you?

11:17AM 10 A None.

11:17AM 11 Q Do you recall what you were sentenced to as far as time?

11:17AM 12 A I think I got -- I'm not quite sure. I think I got
11:17AM 13 15 years, eight months. And then an additional 12 months for
11:17AM 14 violation probation.

11:17AM 15 Q Earlier you told us that prior to the kidnapping, Wayne
11:18AM 16 Miller had described how he had fallen out of Michael Miske's
11:18AM 17 good graces.

11:18AM 18 A Um-hm.

11:18AM 19 Q Did Wayne Miller indicate to you anything he was trying to
11:18AM 20 do to sort of get back into those good graces?

11:18AM 21 MR. KENNEDY: Objection; hearsay, Your Honor.

11:18AM 22 THE COURT: Overruled. Go ahead.

11:18AM 23 THE WITNESS: Not specifically that I remember.

11:18AM 24 BY MR. AKINA:

11:18AM 25 Q You're not aware of anything?

11:18AM 1 A Yeah.

11:18AM 2 MR. AKINA: Thank you. I have no further questions.

11:18AM 3 THE COURT: Mr. Kennedy.

11:18AM 4 CROSS-EXAMINATION

11:18AM 5 BY MR. KENNEDY:

11:18AM 6 Q Sir, this kidnapping happened in October 17th of 2017,
11:18AM 7 correct?

11:18AM 8 A I believe so.

11:18AM 9 Q And it's 2024 now, right?

11:19AM 10 A Correct.

11:19AM 11 Q And you mentioned that you gave grand jury testimony,
11:19AM 12 right?

11:19AM 13 A Correct.

11:19AM 14 Q And you gave that grand jury testimony not too long after
11:19AM 15 you were arrested, correct?

11:19AM 16 A Correct.

11:19AM 17 Q So I believe the government just indicated that on
11:19AM 18 August 8th of 2018, you were arrested, right?

11:19AM 19 A Sounds right.

11:19AM 20 Q And then within two months, on October 10th of 2018, you
11:19AM 21 were in front of a grand jury, correct?

11:19AM 22 A Correct.

11:19AM 23 Q You would agree with me that the events that happened on
11:19AM 24 October 17, 2017 were a little fresher in your mind back then
11:19AM 25 than they are today, more than five years later, correct?

11:19AM 1 A Can you repeat that.

11:19AM 2 Q Sure. When you testified in front of the grand jury, you

11:19AM 3 raised your hand and you said you would tell them the truth,

11:19AM 4 right?

11:19AM 5 A Correct.

11:19AM 6 Q And you were under penalty of perjury, right?

11:19AM 7 A Correct.

11:19AM 8 Q Just like you are today, right?

11:20AM 9 A Correct.

11:20AM 10 Q You were raising your hand and describing those events

11:20AM 11 less than a year after they happened, right?

11:20AM 12 A I believe so, yeah.

11:20AM 13 Q Now, we are close to six years afterwards, right?

11:20AM 14 A Correct.

11:20AM 15 Q So when you were giving your testimony under oath, you

11:20AM 16 would agree, in front of a grand jury, that those events were a

11:20AM 17 little fresher in your mind than they are today, correct?

11:20AM 18 A Correct.

11:20AM 19 Q Okay. So I want to ask you some questions.

11:20AM 20 The meeting with the CPA, Wayne Miller had his phone

11:20AM 21 number, right?

11:20AM 22 A I believe so.

11:20AM 23 Q And you observed him calling him, right?

11:20AM 24 A I believe so.

11:20AM 25 Q All right. So would it help to refresh your recollection

11:20AM 1 about that to take a look at your sworn testimony to the grand
11:21AM 2 jury on October 10th of 2018?

11:21AM 3 A Sure.

11:21AM 4 Q All right. Just for the witness, Mr. Ortiz, Ms. King,
11:21AM 5 could you put up 7350, go to page 16 and lines one through
11:21AM 6 eight. And then, sir, just read that to yourself and once
11:21AM 7 you've done so, I'll ask you some questions. I think -- is it
11:21AM 8 on the defense table? May we please have it on the defense
11:21AM 9 table?

11:22AM 10 Have you had time to review that, sir?

11:22AM 11 A Yes.

11:23AM 12 Q All right. So let me ask you some questions about that.

11:23AM 13 A Sure.

11:23AM 14 Q Wayne Miller had his phone number, correct?

11:23AM 15 A Correct.

11:23AM 16 Q You observed him calling the accountant, right?

11:23AM 17 A Correct.

11:23AM 18 Q By him, I mean Wayne Miller?

11:23AM 19 A Yes.

11:23AM 20 Q Wayne Miller called him a couple of times before you
11:23AM 21 actually met, correct?

11:23AM 22 A Like I said, that's what I believed.

11:23AM 23 Q And Wayne Miller set up the appointment to meet the
11:23AM 24 accountant at the Fisherman's Wharf at a certain time, correct?

11:23AM 25 A Um.

11:23AM 1 Q Let me ask you this: Is that your sworn testimony on

11:23AM 2 October 10, 2018?

11:23AM 3 A It is.

11:23AM 4 Q All right. Now, the government asked you a question

11:24AM 5 about, okay, do you remember the time of day, and you said you

11:24AM 6 weren't sure, correct?

11:24AM 7 A Um-hm.

11:24AM 8 Q Do you recall that it was -- do you recall your sworn

11:24AM 9 testimony on October 10, 2018?

11:24AM 10 A This right here?

11:24AM 11 Q No. We can remove this from the screen for a second and

11:24AM 12 just keep page 16 up.

11:24AM 13 Do you recall the time that Wayne Miller set up the

11:24AM 14 appointment with the accountant?

11:24AM 15 A No.

11:24AM 16 Q All right. Would looking at your sworn testimony on

11:24AM 17 October 10th of 2018 help you remember?

11:24AM 18 A Sure.

11:24AM 19 Q All right. Ms. King, if you could pull up 7350, page 16,

11:24AM 20 lines 19 through 24, just for Mr. Ortiz. Lines 19 through 24.

11:25AM 21 If I said 1 through 8, I apologize. Looks to be frozen. If we

11:25AM 22 could blow up lines 19 through 24 so it's a little easier for

11:25AM 23 Mr. Ortiz to read it.

11:25AM 24 Take a chance to read those lines, sir, and when you

11:25AM 25 are done, just let me know and I'll ask you a question.

11:25AM 1 A Go ahead.

11:25AM 2 Q Does reading that help refresh your recollection?

11:25AM 3 A Sure.

11:25AM 4 Q So on October 10, 2018, you were asked, Do you remember

11:26AM 5 what time a day more or less it was you met? And your answer

11:26AM 6 was, Before I was still -- I know it was later in the evening

11:26AM 7 but still very light outside. Correct?

11:26AM 8 A Correct.

11:26AM 9 Q So it was evening but still light. That's what you told

11:26AM 10 the grand jury on October 10th of 2018, correct?

11:26AM 11 MR. AKINA: Could we let the witness answer the

11:26AM 12 question, please.

11:26AM 13 MR. KENNEDY: I asked a follow-up question.

11:26AM 14 THE COURT: Go ahead and answer the question.

11:26AM 15 THE WITNESS: So you are asking the exact time that we

11:26AM 16 called or are you asking like -- I mean, that's what I told the

11:26AM 17 grand jury.

11:26AM 18 BY MR. KENNEDY:

11:26AM 19 Q Let me ask you this way, sir. Did you tell the grand jury

11:26AM 20 on October 10, 2018 under oath that you knew it was later in

11:27AM 21 the evening but it was still light outside?

11:27AM 22 A Yeah, but define evening. I mean --

11:27AM 23 Q Those were your words, right, to a grand jury under oath,

11:27AM 24 right?

11:27AM 25 A Yes.

11:27AM 1 Q So as I take it, it's the evening but still light, right?

11:27AM 2 A Yeah.

11:27AM 3 Q As opposed to the evening and dark?

11:27AM 4 A Yeah. So evening is like after lunch, before dinner,
11:27AM 5 around dinner.

11:27AM 6 Q Around dinner?

11:27AM 7 A After lunch.

11:27AM 8 Q After lunch. Okay.

11:27AM 9 A Fair to say.

11:27AM 10 Q Now, when you talked to the FBI on September 28th of 2018,
11:27AM 11 you said that you met them around five p.m., correct?

11:27AM 12 A I don't remember.

11:28AM 13 Q If we could pull up Exhibit 9012-005, the fourth page to
11:28AM 14 see if that refreshes your recollection, sir. And if you could
11:28AM 15 blow up the last paragraph on 9012-05-004. Read that to
11:28AM 16 yourself, please.

11:28AM 17 A Okay.

11:29AM 18 Q Have you had a chance to review that?

11:29AM 19 A I have.

11:29AM 20 Q So question is, when you spoke with the FBI on
11:29AM 21 September 28, 2018, that was part of your proffer agreement,
11:29AM 22 correct?

11:29AM 23 A Correct.

11:29AM 24 Q You told them that Mr. Miller called the accountant a
11:29AM 25 couple of days prior to the kidnapping, correct?

11:30AM 1 A Um-hm.

11:30AM 2 Q Once on the day of the kidnapping, right?

11:30AM 3 A I believe so.

11:30AM 4 Q That's consistent with what you told the grand jury,
11:30AM 5 correct?

11:30AM 6 A I believe so.

11:30AM 7 Q And it's consistent with what you told these folks today,
11:30AM 8 that Mr. Miller made the call?

11:30AM 9 A I believe so.

11:30AM 10 Q All right. Mr. Miller was able to get the accountant to
11:30AM 11 agree to a meeting, correct?

11:30AM 12 A Correct.

11:30AM 13 Q You told them on September 28th, they agreed to meet in
11:30AM 14 the evening?

11:30AM 15 A I don't remember the exact time, but I mean, at some
11:30AM 16 point, yeah.

11:30AM 17 Q And you told the FBI that you and Miller drove to the area
11:30AM 18 around five p.m. approximately one hour before the proposed
11:30AM 19 meeting time?

11:30AM 20 A Yeah, again, like the exact time isn't -- again, these are
11:30AM 21 just guesses. Like, I couldn't honestly tell you, you know,
11:31AM 22 the exact time. I mean, when I was saying this, I was just
11:31AM 23 kind of like giving the best recollection.

11:31AM 24 Q Okay. So the best recollection was you agreed to meet in
11:31AM 25 the evening around 5:00, right?

11:31AM 1 A Um-hm.

11:31AM 2 Q Is that what you told the FBI on the 28th of September,
11:31AM 3 2018?

11:31AM 4 A That's what it looks like.

11:31AM 5 Q Now, sir, during that meeting, they were asking you about
11:31AM 6 locations, so I'm going to show you what has been marked as
11:31AM 7 9012-014-001. I'm sorry, I misspoke. That was my mistake.
11:31AM 8 9010-014-001.

11:32AM 9 Do you recall that the FBI was working with you with
11:32AM 10 Google and dropping a pin right near where you said you met the
11:32AM 11 accountant, correct?

11:32AM 12 A Repeat that.

11:32AM 13 Q Yes. You were describing where you went, correct?

11:32AM 14 A Correct.

11:32AM 15 Q The FBI was using Google Maps to show you a location,
11:32AM 16 correct?

11:32AM 17 A When? The FBI?

11:32AM 18 Q When you were meeting with them on September 28th, sir.

11:32AM 19 A I think I told them where we met.

11:32AM 20 Q Right. And then they showed you a location and you
11:32AM 21 dropped a pin to show them exactly where the meeting occurred
11:32AM 22 during that interview; do you recall that?

11:32AM 23 A I believe so.

11:32AM 24 Q All right. Looking at 9012-014, does that look like the
11:33AM 25 location of where you described the kidnapping of the

11:33AM 1 accountant?

11:33AM 2 A That's what it looks like.

11:33AM 3 MR. KENNEDY: At this time, I would move 9012-014 into
11:33AM 4 evidence.

11:33AM 5 MR. AKINA: No objection.

11:33AM 6 THE COURT: I want to be clear, because you just gave
11:33AM 7 two different numbers, Mr. Kennedy.

11:33AM 8 MR. KENNEDY: I'm sorry. It's 9012-014 and that is my
11:33AM 9 mistake, Your Honor. I did give two numbers.

11:33AM 10 THE COURT: So it's 9012-014-001?

11:33AM 11 MR. KENNEDY: Yes.

11:33AM 12 THE COURT: So without objection, that document is
11:33AM 13 admitted and you may publish.

11:33AM 14 (Exhibit 9012-014-001 was received in evidence.)

11:33AM 15 BY MR. KENNEDY:

11:33AM 16 Q So now, this is the location of where the kidnapping
11:33AM 17 happened, correct?

11:33AM 18 A I believe so.

11:33AM 19 Q And you were helping the FBI see exactly where it was the
11:34AM 20 at, right?

11:34AM 21 A I believe so.

11:34AM 22 Q Now, previous to that, you had met with the ATF, right?

11:34AM 23 A When?

11:34AM 24 Q Or was it the DEA? You were talking to a lot of folks.

11:34AM 25 Do you recall that?

11:34AM 1 A I don't know which time you're talking about.

11:34AM 2 Q All right. I think it was the DEA. Do you recall meeting

11:34AM 3 with them on both the 21st of September and the 28th of

11:34AM 4 September?

11:34AM 5 A I honestly -- I don't know any dates. I do remember

11:34AM 6 meeting with them.

11:34AM 7 Q Okay, and they asked you questions.

11:34AM 8 So the way this progressed was you had a meeting first

11:34AM 9 with the DEA, right?

11:34AM 10 A I honestly don't remember.

11:34AM 11 Q Because the DEA was who was arrested you?

11:34AM 12 A Are you talking about the day of my arrest?

11:34AM 13 Q No. I'm talking about in September of 2018 after you were

11:34AM 14 cooperating.

11:35AM 15 A At what point, though?

11:35AM 16 Q Would it help refresh your recollection if you saw a

11:35AM 17 report?

11:35AM 18 A Sure.

11:35AM 19 Q All right. Let's pull up 9012-008.

11:35AM 20 Now you said you had a proffer agreement pursuant to

11:35AM 21 your plea agreement, right?

11:35AM 22 MR. AKINA: Objection. It's not exactly what the

11:35AM 23 witness said.

11:35AM 24 BY MR. KENNEDY:

11:35AM 25 Q You had a proffer agreement, right?

11:35AM 1 A I did.

11:35AM 2 Q And you know what a proffer agreement is; it's an

11:35AM 3 agreement that you get to talk and they can't use that against

11:35AM 4 you, right?

11:35AM 5 A Correct.

11:35AM 6 Q All right. And so this was an interview that you see on

11:35AM 7 the 21st and the 28th of September pursuant to your proffer

11:35AM 8 agreement, right? Do you see that your attorney was there?

11:36AM 9 A Where does it say that?

11:36AM 10 Q Up in the first paragraph, sir.

11:36AM 11 A Okay.

11:36AM 12 Q All right. And do you see someone from the

11:36AM 13 U.S. Attorney's office was there?

11:36AM 14 A Um-hm.

11:36AM 15 Q And there were agents from the DEA there?

11:36AM 16 A Um-hm.

11:36AM 17 Q Okay. So now, if we go to page three of that, and if we

11:37AM 18 go down to the bottom portion of that document and just blow

11:37AM 19 that up, if you begin with the first line, just read that first

11:37AM 20 sentence. And then if you read the second sentence as well,

11:37AM 21 let me know when you are finished.

11:37AM 22 A You want me to read it?

11:37AM 23 Q Just to yourself, yes. Have you finished that, sir?

11:38AM 24 A I'm on the last one. Okay.

11:38AM 25 THE COURT: Mr. Kennedy, just a second. Just one

11:38AM 1 second, Tammy. Just a second.

11:38AM 2 MR. KENNEDY: You got it.

11:39AM 3 THE COURT: As soon as Ms. Kimura is back, you may

11:39AM 4 resume, Mr. Kennedy.

11:40AM 5 Go ahead.

11:40AM 6 BY MR. KENNEDY:

11:40AM 7 Q So sir, during those proffer sessions, you said at dusk

11:40AM 8 the accountant pulled up in an a small black sports utility

11:40AM 9 vehicle, correct?

11:40AM 10 A After reading this, it's like, you know, obviously at the

11:40AM 11 time of saying this, that's, you know, what I believed to be

11:40AM 12 true. And then we are here six years later, and obviously some

11:41AM 13 things aren't as clear and some things are a little more clear.

11:41AM 14 So.

11:41AM 15 Q The question is, sir, did you tell him --

11:41AM 16 A What is the exact question?

11:41AM 17 Q Did you tell the DEA on September 21st and/or 28th of 2018

11:41AM 18 that the accountant pulled up at dusk in a small black sports

11:41AM 19 utility vehicle?

11:41AM 20 A Yeah. I don't actually remember saying that exactly, but

11:41AM 21 I mean, that's what's written.

11:41AM 22 Q You can pull that down. That would be consistent with

11:41AM 23 sometime around five p.m., right?

11:41AM 24 A Sure.

11:41AM 25 Q And it would be consistent with your sworn testimony on

11:41AM 1 October 10th of 2018 that it was in the evening, but it was
11:42AM 2 still light outside, correct?
11:42AM 3 A Yeah. Again, I don't remember exactly what I said, but...
11:42AM 4 Q Well, I'm not asking you exactly. You saw it, you said it
11:42AM 5 under oath; the same oath you took today, right?
11:42AM 6 A Um-hm.
11:42AM 7 Q Now, Mr. Miller -- Wayne Miller drove his black Crown Vic
11:42AM 8 during that kidnapping, didn't he?
11:42AM 9 A Yeah. We both did.
11:42AM 10 Q Yeah. It wasn't being painted. It was used during the
11:43AM 11 kidnapping, wasn't it?
11:43AM 12 A His Crown Vic?
11:43AM 13 Q Yes.
11:43AM 14 A Yes.
11:43AM 15 Q And you drove it because it reassembled a cop car?
11:43AM 16 A I mean, that was his car as well, but yeah.
11:43AM 17 Q And he got it from an auction and it was an old police
11:43AM 18 vehicle, right?
11:43AM 19 A Correct.
11:43AM 20 Q And so the plan was for you to impersonate police
11:43AM 21 officers, so driving in a car that looked like a police car
11:43AM 22 because it had been part of the plan?
11:43AM 23 A Yeah, I believe so.
11:43AM 24 Q Now, you told the jury that Mr. Miller beat the accountant
11:43AM 25 with his fist?

11:43AM 1 A You're asking me if I said that?

11:44AM 2 Q Yes.

11:44AM 3 A I believe so.

11:44AM 4 Q He used a pistol and he pistol whipped him, right?

11:44AM 5 A Correct.

11:44AM 6 Q He also had a silencer and he put it against his head and

11:44AM 7 told him he was going to kill him if he didn't give him money,

11:44AM 8 correct?

11:44AM 9 A I believe so at one point.

11:44AM 10 Q You don't think so; you've given sworn testimony to that

11:44AM 11 fact, haven't you, sir?

11:44AM 12 A I have.

11:44AM 13 Q And so your words were, I'm not sure at that point if

11:44AM 14 that's when he pistol whipped him or if it was another point,

11:44AM 15 you know, he threatened to kill him if he didn't give the

11:44AM 16 money.

11:44AM 17 He had a gun with a silencer, right?

11:44AM 18 A Correct.

11:44AM 19 Q So he had a chrome 357 that day, right?

11:44AM 20 A I don't know exactly what a 357 is.

11:44AM 21 Q Okay. And he had a smaller pistol with a silencer, right?

11:44AM 22 A That's the one I remember.

11:44AM 23 Q And he had access to another black pistol with a silencer

11:45AM 24 that day.

11:45AM 25 That's what you told the FBI, right?

11:45AM 1 A Correct.

11:45AM 2 Q Now, with respect to this silencer, you remember that

11:45AM 3 Wayne Miller got it from somebody's house, one of his buddies.

11:45AM 4 Do you recall that?

11:45AM 5 A I do.

11:45AM 6 Q And then that person did the milling of it?

11:45AM 7 A I believe so, yeah.

11:45AM 8 Q And that person is Norm Akau, isn't it?

11:45AM 9 A Honestly, I don't know who.

11:45AM 10 Q Now, in using that silencer with a pistol, he literally

11:45AM 11 put it to the guy's temple demanding money, correct?

11:45AM 12 A I don't know if he, like, actually pressed it against his

11:46AM 13 head. Again, I was driving, so it was being in the rear view

11:46AM 14 mirror.

11:46AM 15 Q Didn't you tell the FBI under a proffer agreement that

11:46AM 16 Miller placed the pistol with the silencer against the

11:46AM 17 accountant's head at one point, demanding money?

11:46AM 18 A Yeah, but like I said, I don't know if it was actually,

11:46AM 19 like, pressed, you know what I mean. I just know it was, like,

11:46AM 20 pointed.

11:46AM 21 Q Pointed at his head threatening to kill him?

11:46AM 22 A Correct.

11:46AM 23 Q All right. Now, I'd like to pull up some photographs at

11:46AM 24 this point that are in evidence. Exhibits 6015-0001.

11:46AM 25 And can we publish 6015-0001?

11:47AM 1 THE COURT: This is on the original list?

11:47AM 2 MR. KENNEDY: Yes, Your Honor.

11:47AM 3 MS. PANAGAKOS: No, it's --

11:47AM 4 MR. KENNEDY: Oh, no? Let me grab this and I'll tell

11:47AM 5 you. First supplemental, Your Honor.

11:47AM 6 THE COURT: Yes. Go ahead.

11:47AM 7 BY MR. KENNEDY:

11:47AM 8 Q All right. If we move to Exhibit 6015-0011.

11:47AM 9 Do you recognize what is shown by the placard number

11:47AM 10 nine?

11:47AM 11 A Um-hm.

11:47AM 12 Q How is it that you recognize it?

11:47AM 13 A I mean, it looks like the handcuffs that we used.

11:47AM 14 Q Now, if we move to placard eight and blow that up. You

11:48AM 15 mentioned going to an antique store.

11:48AM 16 A Um-hm.

11:48AM 17 Q Does that look like one of the items that you saw, told

11:48AM 18 Wayne Miller about, and he purchased?

11:48AM 19 A I mean, I don't know if it's the exact one, but it looks

11:48AM 20 like it.

11:48AM 21 Q All right. Looking at item seven, if we blow that one up.

11:48AM 22 Similar to your last testimony, sir?

11:48AM 23 A Correct.

11:48AM 24 Q All right. Looking at item six. I take it you had at

11:48AM 25 least two that day.

11:48AM 1 Did you buy three?

11:48AM 2 A I honestly -- I don't remember. Very well could have.

11:48AM 3 Q All right. Let's --

11:48AM 4 A I know, like I said, there was more. There was another

11:48AM 5 one that we didn't get obviously. There was an old fire

11:49AM 6 marshal badge or something, a fireman or something.

11:49AM 7 Q Okay. All right. Let's look at Exhibit 6015-0053.

11:49AM 8 Do you recognize that gun?

11:49AM 9 A Um-hm.

11:49AM 10 Q That's because that's a 22 magazine and a silencer,

11:49AM 11 correct?

11:49AM 12 A I believe so.

11:49AM 13 Q And that's what Wayne Miller had with him that day, wasn't

11:49AM 14 it?

11:49AM 15 A I believe so.

11:49AM 16 Q Let's go to 6015-0057. That's the silencer portion?

11:49AM 17 A Looks like it.

11:49AM 18 Q All right. Let's go to Exhibit 6015-0060. The other end

11:50AM 19 of the silencer, correct?

11:50AM 20 A Uh --

11:50AM 21 Q You can see it's got some threads on it so it fits on to

11:50AM 22 the threaded end of the 22?

11:50AM 23 A Um-hm.

11:50AM 24 Q Let's move to 6015-0061. 6015-0063.

11:50AM 25 Now you said that he was pistol whipping the

11:50AM 1 accountant?

11:50AM 2 A Yeah. He struck him.

11:50AM 3 Q 6015-0067. 6015-0075. And that's the pistol you
11:50AM 4 recognized, correct?

11:50AM 5 A I believe so.

11:50AM 6 Q 6015-0077. Close up view, correct? 6015-0085.

11:51AM 7 6015-0089. 6015-0094. All right.

11:51AM 8 Now, you saw the badges at the antique store, but
11:51AM 9 Wayne Miller is the one who purchased them, right?

11:51AM 10 A Correct.

11:51AM 11 Q So I want to show you some photos that are in evidence.

11:51AM 12 6015-0011. If we could just pull up -- there we go. So

11:52AM 13 orienting you to these nine different tabs, I'm going to show

11:52AM 14 you some close ups of some of the items, all right, sir.

11:52AM 15 Exhibit 6015-0099.

11:52AM 16 Now that you have a close up, does that look like the
11:52AM 17 badge that you saw that Wayne Miller purchased?

11:52AM 18 A It is. It does look like it.

11:52AM 19 Q 6015-0104. Does that look like another badge that you saw
11:52AM 20 that Wayne Miller purchased?

11:52AM 21 A It does.

11:52AM 22 Q 6015-0107. Does that look like another badge that you saw
11:52AM 23 that Wayne Miller purchased?

11:52AM 24 A Possibly. More so, the other ones for sure.

11:53AM 25 Q Okay. This might just be one that you don't recognize; is

11:53AM 1 that right?

11:53AM 2 A I mean, all badges kind of look the same.

11:53AM 3 Q Let's look at 6015-0112.

11:53AM 4 These reassemble the handcuffs that you used that day?

11:53AM 5 A I would say, yeah.

11:53AM 6 Q Do they look like the ones that you did use?

11:53AM 7 A Excuse me?

11:53AM 8 Q Does it look like they are the ones you did use?

11:53AM 9 A Yeah, it does.

11:53AM 10 Q Let's look at 6015-0170. Now, do you recognize this TUMI

11:53AM 11 Global Locater?

11:54AM 12 A I don't.

11:54AM 13 Q All right. Let's look at 6015-0174.

11:54AM 14 A That might be --

11:54AM 15 Q All right. That would be the backside. 6015-0176.

11:54AM 16 Have you seen this global locater TUMI opened up?

11:54AM 17 A Um...

11:54AM 18 Q Is that a yes or no, sir?

11:54AM 19 A Yes. It looks like one that I actually bought before.

11:54AM 20 Q Okay. 6015-0178. If we can go in on the TUMI receipt

11:55AM 21 that's shown in it 6015-0178.

11:55AM 22 Is that blown up enough for you to see that, sir?

11:55AM 23 Perhaps we can highlight the top portion of that receipt.

11:55AM 24 A Yeah, I remember that.

11:55AM 25 Q Okay. This is one you bought, correct?

11:55AM 1 A Yes.

11:55AM 2 Q In Palm Springs -- Palm Desert, California?

11:55AM 3 A Correct.

11:55AM 4 Q This is part of what you were there for when you were
11:55AM 5 setting up the drug dealing?

11:55AM 6 A Correct.

11:55AM 7 Q Because the supply was coming from California to Hawaii,
11:55AM 8 correct?

11:55AM 9 A Um-hm.

11:55AM 10 Q And that Wayne Miller was with you, right?

11:55AM 11 A I'm not sure.

11:55AM 12 Q And the two of you were doing this together, right?

11:55AM 13 A Yeah. I mean, obviously, we didn't go to every store
11:56AM 14 together, but.

11:56AM 15 Q I meant you were together on the trip.

11:56AM 16 You were together in these drug dealing of ice at this
11:56AM 17 time?

11:56AM 18 A Correct.

11:56AM 19 Q And so this was a tracker that Mr. Miller and you
11:56AM 20 purchased, right?

11:56AM 21 A I think I purchased it.

11:56AM 22 Q All right. Now, when you were arrested, you didn't have
11:56AM 23 it, did you?

11:56AM 24 A I don't think so.

11:56AM 25 Q You knew that Wayne Miller had it, right?

11:56AM 1 A No, actually, I don't know what happened to it.

11:56AM 2 Q Okay. So it could be that Wayne Miller stole it from you?

11:56AM 3 MR. AKINA: Objection; speculation.

11:56AM 4 THE COURT: You can answer. Go ahead.

11:56AM 5 THE WITNESS: I honestly don't know what happened to
11:56AM 6 it. I remember buying it, yeah.

11:56AM 7 BY MR. KENNEDY:

11:56AM 8 Q All right. If we can go down from that and look at
11:56AM 9 6015-0181 and 605-0184 (verbatim).

11:57AM 10 Now, this 1515 South King Street, that's where you
11:57AM 11 were staying at, right?

11:57AM 12 A With Wayne, or...

11:57AM 13 Q With Wayne.

11:57AM 14 A No. I think I was staying here on my own.

11:57AM 15 Q All right. Eventually you and Wayne were staying together
11:57AM 16 though, right?

11:57AM 17 A Yeah. This is -- this was an older one. This was, like,
11:57AM 18 way before we did the kidnapping and stuff. It used to have
11:57AM 19 packages sent there as well.

11:57AM 20 Q Okay. So this was another location where you were having
11:57AM 21 packages of ice sent to distribute drugs, right?

11:57AM 22 A Correct.

11:57AM 23 Q And this involved Wayne Miller as well, right?

11:58AM 24 A These ones, I don't know if they did because there was a
11:58AM 25 time when I was working with him and there was a time when I

11:58AM 1 wasn't.

11:58AM 2 Q So there was a time you were working with him, right?

11:58AM 3 A Right.

11:58AM 4 Q There was a time you weren't, right?

11:58AM 5 A Yeah. I think this was the time that I wasn't, because

11:58AM 6 like I said, when I wasn't around him, things were getting

11:58AM 7 done. So I honestly -- I couldn't tell you.

11:58AM 8 Q Okay. Fair enough. When you were working with him, what

11:58AM 9 that meant was you were receiving drugs and the two of you were

11:58AM 10 selling it and keeping the money, right?

11:58AM 11 A Yes.

11:58AM 12 Q Okay. Now, you mentioned with respect to the accountant

11:58AM 13 that Mr. Miller had been tracking the CPA for some time, right?

11:58AM 14 A Repeat that.

11:58AM 15 Q Yeah. You mentioned that Wayne Miller told you that he

11:58AM 16 had been tracking the CPA, the accountant for some time?

11:59AM 17 A Correct.

11:59AM 18 Q And you knew that he had been watching the guy, right?

11:59AM 19 A Yes.

11:59AM 20 Q Observing him, yes?

11:59AM 21 A Um-hm.

11:59AM 22 Q Knew his hours, right?

11:59AM 23 A Um-hm.

11:59AM 24 Q Knew where he lived, right?

11:59AM 25 A Um-hm.

11:59AM 1 Q And knew his routine, right?

11:59AM 2 A Correct.

11:59AM 3 Q And so he had been spending a fair amount of time on this,

11:59AM 4 right?

11:59AM 5 A Yeah.

11:59AM 6 Q Okay. And so the deal was that you were to make 50,000?

11:59AM 7 A Correct.

11:59AM 8 Q He was to make 50,000?

11:59AM 9 A Um-hm.

11:59AM 10 Q Because the CPA was dirty and had stolen money?

11:59AM 11 A Correct.

11:59AM 12 Q And so there was a hundred thousand in it?

11:59AM 13 A Um-hm.

11:59AM 14 Q Okay. Now, you mentioned that you were homeless, right?

11:59AM 15 A Correct.

11:59AM 16 Q You didn't have a place to stay?

12:00PM 17 A Um-hm.

12:00PM 18 Q You were staying at your friend's house.

12:00PM 19 And this was right around the time when the kidnapping

12:00PM 20 happened, correct?

12:00PM 21 A Sorry, repeat that.

12:00PM 22 Q You were staying at your friend's house at the time the

12:00PM 23 kidnapping happened?

12:00PM 24 A Yes, correct.

12:00PM 25 Q Before that, you and Wayne Miller -- let me step back.

12:00PM 1 You and Wayne Miller were staying at your friend's

12:00PM 2 house together, correct?

12:00PM 3 A Correct.

12:00PM 4 Q Before that, you and Wayne Miller were staying at a vacant

12:00PM 5 apartment, right?

12:00PM 6 A Correct.

12:00PM 7 Q So you were basically just slumming it there, right?

12:00PM 8 A Yes, correct.

12:00PM 9 Q You didn't have any money, right?

12:00PM 10 A Um-hm.

12:00PM 11 Q You didn't have a source of income?

12:00PM 12 A Um-hm.

12:00PM 13 Q You are addicted to heroin?

12:00PM 14 A Um-hm.

12:00PM 15 Q Sounds like he has now become addicted to heroin?

12:00PM 16 A Um-hm.

12:00PM 17 Q You are saying um-hm. Is that a yes?

12:01PM 18 A That's a yes.

12:01PM 19 Q Okay, because the court reporter has to write down your

12:01PM 20 answer.

12:01PM 21 A No problem. You got it.

12:01PM 22 Q So that's a yes to you were addicted to heroin?

12:01PM 23 A Yes.

12:01PM 24 Q Wayne Miller was addicted to heroin?

12:01PM 25 A Yes.

12:01PM 1 Q And I believe you just told us, I think for the first
12:01PM 2 time, that you actually shot up heroin while you were
12:01PM 3 kidnapping this accountant?
12:01PM 4 A Is that a question?
12:01PM 5 Q Yes.
12:01PM 6 A Yeah, I would shoot up heroin.
12:01PM 7 Q Right. Because you didn't tell the grand jury back that
12:01PM 8 in October 2018, did you?
12:01PM 9 MR. AKINA: Objection, Your Honor; 403.
12:01PM 10 THE COURT: Sustained.
12:01PM 11 THE WITNESS: Is that a question?
12:01PM 12 BY MR. KENNEDY:
12:01PM 13 Q It was sustained so you don't need to answer it, sir.
12:01PM 14 Now, you mentioned that a couple days before the
12:02PM 15 kidnapping, Wayne Miller went to Kama'aina Termite and Pest
12:02PM 16 Control.
12:02PM 17 A Correct.
12:02PM 18 Q Were you aware that his relative works there?
12:02PM 19 A I was not.
12:02PM 20 Q Were you aware that she purchased the tracking device?
12:02PM 21 A I was not.
12:02PM 22 Q Were you aware that he was paying her money for that
12:02PM 23 tracking device?
12:02PM 24 A I was not.
12:02PM 25 Q Because when you answered previously earlier to the jury,

12:02PM 1 you said that you guessed that it came from there, right?

12:02PM 2 A Correct.

12:02PM 3 Q And you guessed because what happened was Wayne came back,
12:02PM 4 right, got in the car.

12:02PM 5 You drove a short distance and then the two of you
12:02PM 6 smoked heroin, right?

12:03PM 7 A Correct.

12:03PM 8 Q So it was after you smoked heroin in the car that later he
12:03PM 9 showed you the tracking device, right?

12:03PM 10 A That is correct.

12:03PM 11 Q And then he said I've been surveilling, right, and using
12:03PM 12 it, right?

12:03PM 13 A Correct.

12:03PM 14 Q So it was only after you had smoked heroin and sometime
12:03PM 15 later did he show it to you, correct?

12:03PM 16 A That is correct.

12:03PM 17 Q Now, you mentioned that Mr. Wayne Miller had spent
12:03PM 18 multiple times observing this accountant, right?

12:03PM 19 A That's what he said.

12:03PM 20 Q And I believe that while Mr. Wayne Miller was beating the
12:04PM 21 accountant, saying "Give us the money or we will kill you," he
12:04PM 22 was pleading to let him go?

12:04PM 23 A The accountant?

12:04PM 24 Q Yes.

12:04PM 25 A Yes.

12:04PM 1 Q Directed at Wayne Miller, right?

12:04PM 2 A I mean, I'm pretty sure just in general he wanted --

12:04PM 3 Q He was the one with the gun, right?

12:04PM 4 A Correct.

12:04PM 5 Q You didn't have one, did you?

12:04PM 6 A No, sir.

12:04PM 7 Q All right. Now, the government asked you about some stops

12:04PM 8 along the way that you had been, so I want to go over that with

12:04PM 9 you.

12:04PM 10 A Sure.

12:04PM 11 Q You indicated several stops and you've given some

12:04PM 12 testimony about it.

12:04PM 13 A Um-hm.

12:04PM 14 Q So do you recall the first stop that you made?

12:05PM 15 A The one on my friend's street.

12:05PM 16 Q Yes. So let's take a look at 7350 page 21, lines seven

12:05PM 17 through 22. Just read that to yourself, sir, and I want to ask

12:05PM 18 you some questions about it.

12:06PM 19 A Okay.

12:06PM 20 Q All right. Now, I'd like to pull up at this point Exhibit

12:06PM 21 9012-005, which is not in evidence.

12:06PM 22 Now, you testified about your first stop to the grand

12:06PM 23 jury on October 10th of 2018, right? You just saw that,

12:06PM 24 correct?

12:06PM 25 A Correct.

12:06PM 1 Q And you also told the FBI about it on September 28th of
12:06PM 2 2018 as well, correct?

12:06PM 3 A I believe so.

12:06PM 4 Q All right. So I want to show you what has been marked as
12:06PM 5 9012-014-0002, which is not in evidence yet. And I believe it
12:06PM 6 would be in the first supplemental, correct, or is it -- yeah,
12:07PM 7 that one should be in the first, I believe.

12:07PM 8 MS. PANAGAKOS: It's in the original list.

12:07PM 9 MR. KENNEDY: It's in the original list. I apologize,
12:07PM 10 Your Honor.

12:07PM 11 MS. PANAGAKOS: I'm sorry. It's the first
12:07PM 12 supplemental. I'm sorry, Your Honor.

12:08PM 13 THE COURT: Go ahead.

12:08PM 14 BY MR. KENNEDY:

12:08PM 15 Q Sir, I'm showing you 9012-014-0002.

12:08PM 16 You recognize that as the location where you made the
12:08PM 17 first stop when you discussed this with the FBI?

12:08PM 18 A Yeah, I'm not sure if this was the first stop. I just
12:08PM 19 know it was one of the stops that stuck out to me because I'm
12:08PM 20 familiar with the surroundings. I have a friend that lives
12:08PM 21 around there. So when we stopped there, it kind of stuck out
12:08PM 22 to me.

12:08PM 23 MR. KENNEDY: At this time, Your Honor, I would move
12:08PM 24 9012-014-0002 into evidence.

12:08PM 25 THE COURT: Any objection?

12:08PM 1 MR. AKINA: No objection.

12:08PM 2 THE COURT: Without objection --

12:08PM 3 MR. KENNEDY: May we publish.

12:08PM 4 THE COURT: You may. Without objection, that document

12:09PM 5 is admitted, 9012-014-0002.

12:09PM 6 (Exhibit 9012-014-0002 was received in evidence.)

12:09PM 7 BY MR. KENNEDY:

12:09PM 8 Q So this is at the near Prospect and Alapai, right?

12:09PM 9 A Correct.

12:09PM 10 Q Okay. And this isn't the Sheridan Park area, right?

12:09PM 11 A No, sir.

12:09PM 12 Q Okay. So I pull up 9012-16-1 which is in the supplemental

12:09PM 13 exhibit list eight, Your Honor.

12:09PM 14 Do you recognize the area 940 Queen Street?

12:09PM 15 A Was that the --

12:10PM 16 Q You recognized it earlier when you were pointing out --

12:10PM 17 A Yeah, but I'm saying it's a different.

12:10PM 18 Q Yeah.

12:10PM 19 A Is that the fumigation?

12:10PM 20 Q Correct.

12:10PM 21 A Okay.

12:10PM 22 Q And so up at the top, you recognize where the pin is at

12:10PM 23 Prospect Street and Alapai?

12:10PM 24 A Correct.

12:10PM 25 MR. KENNEDY: At this time, Your Honor, I would move

12:10PM 1 9012-016-001 into evidence.

12:10PM 2 THE COURT: Any objection?

12:10PM 3 MR. AKINA: No objection.

12:10PM 4 MR. KENNEDY: May we publish?

12:10PM 5 THE COURT: You may. Without objection, that document
12:10PM 6 is admitted, 9012-16-1.

12:10PM 7 (Exhibit 9012-16-001 was received in evidence.)

12:10PM 8 BY MR. KENNEDY:

12:10PM 9 Q So on this document, you will see that it's -- by the
12:10PM 10 Google, it's a 26-minute walk from the location on Prospect
12:10PM 11 Street to Alapai down to 940 Queen Street, correct?

12:10PM 12 A Um-hm.

12:11PM 13 Q That's the quickest way. You could take another route,
12:11PM 14 which would be 1.3 miles.

12:11PM 15 And that's a 32-minute walk down and if you were to go
12:11PM 16 back up, another 32 minutes; over an hour to walk down and
12:11PM 17 back, correct?

12:11PM 18 A Looks like that's what Google says, yeah.

12:11PM 19 Q So a little quicker way is just under an hour, right?

12:11PM 20 A Yeah. I'm going off of what you are saying.

12:11PM 21 Q Okay. So if we move to the second stop that you told them
12:11PM 22 about, let's take a look at 9012-015-001.

12:11PM 23 When you met with the FBI, do you recall telling them
12:11PM 24 that this was the second stop that you made?

12:11PM 25 A I do. I remember saying that we stopped at this park a

12:12PM 1 few times. I just remember that the red dot was ultimately the
12:12PM 2 last stop that I recall.

12:12PM 3 MR. KENNEDY: Okay. I would move 9012-015-0001 into
12:12PM 4 evidence.

12:12PM 5 MR. AKINA: I just want to confirm this is a one-page
12:12PM 6 document.

12:12PM 7 MR. KENNEDY: This is a one-page document.

12:12PM 8 MR. AKINA: No objection.

12:12PM 9 MS. PANAGAKOS: That's on the first supplemental list.

12:12PM 10 MR. KENNEDY: Actually, no, it is a two-page document.

12:12PM 11 MR. AKINA: Could we see the second page, please?

12:12PM 12 MR. KENNEDY: Sure.

12:12PM 13 MR. AKINA: No objection to the first page. No
12:12PM 14 foundation to the second at this point.

12:12PM 15 THE COURT: You're offering --

12:12PM 16 MR. KENNEDY: Just the first page, because I don't
12:12PM 17 have foundation for the second page. But I intend to.

12:13PM 18 THE COURT: Without objection, 9012-15-1 only is
12:13PM 19 admitted, and you may publish. But before you ask any
12:13PM 20 questions about that, let's go ahead and take a break. We are
12:13PM 21 at 12:15.

12:13PM 22 As we go to our second break of the trial day, I'll
12:13PM 23 remind our jurors to please refrain from discussing the
24 substance of this case with anyone, including one another,
25 until I advise you otherwise; to refrain from accessing any

1 media or other accounts of this case that may be out there; and
2 then finally, please do not conduct any independent
3 investigation into the facts, circumstances, or persons
12:13PM 4 involved.

12:13PM 5 If the lawyers would please remain.

12:14PM 6 All right just briefly, the jury has departed. You
12:14PM 7 may be seated. If Ms. Kimura is mirroring myself, we are
12:14PM 8 getting -- it's becoming very, very difficult to manage the
12:14PM 9 defense exhibits in particular. You guys are now on exhibit
12:14PM 10 list 10 or 11. Not only is it difficult because of that, but
12:14PM 11 you are taking individual exhibits, breaking them up, offering
12:14PM 12 some -- it's going to be an absolute mess when it comes to
12:14PM 13 pulling these exhibits for jury deliberation.

12:15PM 14 So I'm not sure what the solution is at this point,
12:15PM 15 but you guys need to break up these exhibits into smaller
12:15PM 16 pieces. You can't be taking a ten-page document offering the
12:15PM 17 first 18 text messages and then another page later on in the
12:15PM 18 exhibit and expect us to figure that out. It's a mess. I've
12:15PM 19 got notes here. I assume you guys have notes there. It's
12:15PM 20 getting very complicated.

12:15PM 21 And mistakes are going to get made. That's my
12:15PM 22 concern. So you guys need to break this stuff up in smaller
12:15PM 23 pieces. And right now, I think the best way to do it is to use
12:15PM 24 alpha, beta, etcetera to accomplish that. So that's just my
12:15PM 25 suggestion. We are whatever, 20 some-odd days, I've lost track

12:15PM 1 now, into this trial. We've got many more to go, so there is
12:16PM 2 still time to try to simplify and clarify an otherwise
12:16PM 3 challenging effort on our part. So I appreciate whatever help
12:16PM 4 you guys can give.

12:16PM 5 MS. PANAGAKOS: Your Honor, we are doing our best
12:16PM 6 every day to get the exhibits in as things like this arise. I
12:16PM 7 have the one from this morning to put into the binder as 32A,
12:16PM 8 and I'll deal with that this afternoon. But one thing I wanted
12:16PM 9 to ask is could we file a combined list now that combines
12:16PM 10 everything that we have up to this point and then -- we're
12:16PM 11 going to have more supplements with more crosses of witness.

12:16PM 12 THE COURT: Let me give that some thought, because
12:16PM 13 there is some advantages to doing what you suggest, but there
12:16PM 14 is also some disadvantage. The main disadvantage is we have
12:16PM 15 got to go back, and once we get your combined document, pull
12:16PM 16 notes from all of the other exhibit lists and transfer them.
12:16PM 17 So there is some advantage to doing that now, but I'm not
12:16PM 18 sure -- thus far, I think you guys have been amending or adding
12:17PM 19 exhibits practically every day.

12:17PM 20 MS. PANAGAKOS: Right. And part of the problem is
12:17PM 21 with the number of witnesses, and we had no narrowing of the 80
12:17PM 22 terabytes as to what would be exhibits, and it's just
12:17PM 23 impossible to get -- which is why our exhibits is large, is
12:17PM 24 because we tried to make sure we had everything somewhere that
12:17PM 25 we will need, and now we are pulling out from there. So that's

12:17PM 1 how it came to be the way it is, and that's why we are going to
12:17PM 2 need to supplement as we -- we are still getting discovery. We
12:17PM 3 just got production 42 this week.

12:17PM 4 THE COURT: If you guys amended and combined all of
12:17PM 5 your exhibit lists into one, ten days from now.

12:17PM 6 MS. PANAGAKOS: We would have more. That's why I have
12:17PM 7 not done it and waited for a time to talk about it. I know
12:17PM 8 there is drawbacks too. We will do our best in calling out
12:17PM 9 what list it's on. And.

12:17PM 10 THE COURT: Let me give that some thought and I'll get
12:17PM 11 back to you.

12:17PM 12 MR. KENNEDY: And Your Honor, I believe with some of
12:17PM 13 the witnesses we will go through this afternoon -- I noticed
12:18PM 14 that last night -- so I pulled them out and given them an A on
12:18PM 15 those pages so that we do have that. Because they are part of
12:18PM 16 a larger group of, say, an arrest where, say, photographs are
12:18PM 17 just on a page and there is no JPEG or anything else to pull so
12:18PM 18 we tried to do that last night with supp eight. So I think
12:18PM 19 that's a good suggestion.

12:18PM 20 THE COURT: I think that's where we are. Rather than
12:18PM 21 having to redo everything again, which I'm sure you don't want
12:18PM 22 to do.

12:18PM 23 MR. KENNEDY: Then Tammy has to sit down with us and
12:18PM 24 go through the admitted ones again, and we do that daily.

12:18PM 25 THE COURT: And we are doing that as well. It's just

12:18PM 1 very time-consuming. Thank you.

12:18PM 2 (Proceedings were recessed at 12:18 p.m. to 12:46

12:28PM 3 p.m.)

12:46PM 4 THE COURT: We're back from our second trial break.

12:46PM 5 Mr. Kennedy, you may resume.

12:46PM 6 MR. KENNEDY: May we publish 9012-015-001 that I

12:46PM 7 believe was admitted?

12:46PM 8 THE COURT: Yes.

12:46PM 9 BY MR. KENNEDY:

12:46PM 10 Q Now, this is the pin where you placed the second stop.

12:46PM 11 And this is Sheridan Park, right?

12:46PM 12 A Correct.

12:46PM 13 Q And you said you stopped there on multiple times?

12:46PM 14 A I believe so.

12:46PM 15 Q All right. And you see on the Exhibit 9012-015-001 if we

12:47PM 16 just circle, there is the Sheridan basketball courts?

12:47PM 17 A Um-hm.

12:47PM 18 Q The Sheridan Community Park?

12:47PM 19 A Um-hm.

12:47PM 20 Q And so, this is where you indicated that you had stopped

12:47PM 21 multiple times, right?

12:47PM 22 A Correct.

12:47PM 23 MR. KENNEDY: All right. Now I want to pull up

12:47PM 24 9012-017-0001. It's in exhibit list eight, Your Honor.

12:47PM 25 THE COURT: Okay. Go ahead.

12:47PM 1 BY MR. KENNEDY:

12:47PM 2 Q Now, sir, do you see where the Sheridan Community Park is?

12:47PM 3 A Um-hm.

12:47PM 4 Q All right. And do you see where 940 Queen Street is?

12:48PM 5 A I do.

12:48PM 6 MR. KENNEDY: All right. At this time, Your Honor,

12:48PM 7 I'd move 9012-017 into evidence.

12:48PM 8 MR. AKINA: I'd object on relevance and lack of

12:48PM 9 foundation, specifically with regards to the time estimates for

12:48PM 10 walking.

12:48PM 11 THE COURT: Where is this from? Is this from his

12:48PM 12 statement or report?

12:48PM 13 MR. KENNEDY: This is just showing where he marked it

12:48PM 14 at Sheridan going to 940 Queen Street. It's showing distance.

12:48PM 15 THE COURT: I'm not sure of the relevance of it, but

12:48PM 16 go ahead.

12:48PM 17 MR. KENNEDY: All right.

12:48PM 18 THE COURT: It's admitted.

12:48PM 19 (Exhibit 9012-017 was received in evidence.)

12:48PM 20 MR. KENNEDY: So -- if we can publish it.

12:48PM 21 THE COURT: Yes. Go ahead.

12:48PM 22 BY MR. KENNEDY:

12:48PM 23 Q All right. Between the two areas that we have circled,

12:48PM 24 you can see that the distance there is estimated to be

12:48PM 25 21 minutes, but it's basically a mile walk each way.

12:48PM 1 MR. AKINA: Objection, speculation.

12:49PM 2 MR. KENNEDY: It's on the exhibit .09 miles.

12:49PM 3 THE COURT: The objection is sustained.

12:49PM 4 BY MR. KENNEDY:

12:49PM 5 Q Does the exhibit show a route which would be 0.9 miles,
12:49PM 6 and I'm referring to right here, sir?

12:49PM 7 A That's what it says.

12:49PM 8 Q Okay. And then there is a different route that is longer?

12:49PM 9 A Yes.

12:49PM 10 Q So essentially, a mile down and a mile back; is that a
12:49PM 11 fair statement?

12:49PM 12 A That's what it says.

12:49PM 13 Q All right. Now, let's go -- and this was the location
12:49PM 14 that you marked for multiple stops that evening, right?

12:49PM 15 A Correct.

12:49PM 16 Q Moving on to -- we can pull this down at this point. Now,
12:49PM 17 there was a third location that you marked when you were
12:50PM 18 speaking with the FBI on September 28th of 2018. Correct?

12:50PM 19 A Yes.

12:50PM 20 MR. KENNEDY: All right. And if we could pull up
12:50PM 21 9012-015-0002, which is not yet in evidence. It's in the first
12:50PM 22 supplement, Your Honor.

12:50PM 23 THE COURT: Go ahead.

12:50PM 24 BY MR. KENNEDY:

12:50PM 25 Q Is this the area sir that's near your friend's place?

12:50PM 1 A Yes.

12:50PM 2 Q Okay. And you indicated that you stopped there, correct?

12:50PM 3 A Yes.

12:50PM 4 MR. KENNEDY: All right. At this time, I would move

12:50PM 5 9012-015-002 into evidence and I would move for simplicity

12:50PM 6 9012-015 into evidence. There is a page three we can show the

12:50PM 7 government and a page four. They are just smaller versions of

12:50PM 8 these two.

12:50PM 9 THE COURT: So you are offering three pages into

12:51PM 10 evidence?

12:51PM 11 MR. KENNEDY: I'm sorry.

12:51PM 12 THE COURT: You're offering three pages.

12:51PM 13 MR. KENNEDY: Four pages, sir. And it would be the

12:51PM 14 entirety of the exhibit.

12:51PM 15 MR. AKINA: Could I confirm what the other two pages

12:51PM 16 are?

12:51PM 17 MR. KENNEDY: Sure. Oh, it's only two? No, I don't

12:51PM 18 think so. I think there are two smaller ones. I don't want to

12:51PM 19 misrepresent. Are there not? Okay, then if there is only two,

12:51PM 20 there is only two. It was produced with a smaller one you

12:51PM 21 couldn't see. So I would move 9012-015-002 into evidence, Your

12:51PM 22 Honor.

12:51PM 23 THE COURT: Just that one page?

12:51PM 24 MR. KENNEDY: Yes.

12:51PM 25 MR. AKINA: No objection.

12:51PM 1 THE COURT: Without objection, that one page is

12:51PM 2 admitted, 9012-15-2.

12:51PM 3 (Exhibit 9012-015-002 was received in evidence.)

12:51PM 4 MR. KENNEDY: Can we publish it at this time.

12:51PM 5 THE COURT: Yes, you may.

12:51PM 6 BY MR. KENNEDY:

12:51PM 7 Q So this is the third location that you indicated that you
12:52PM 8 stopped at that evening, correct?

12:52PM 9 A Correct.

12:52PM 10 Q All right. And so in relation to that, if we pull up
12:52PM 11 9012-018-001 which is not in evidence, and it's in exhibit list
12:52PM 12 8, Your Honor.

12:52PM 13 Does this show where you stopped in relation to 940
12:52PM 14 Queen Street?

12:52PM 15 A Yeah, it does.

12:52PM 16 Q All right. And this was one of the locations you stopped.
12:52PM 17 And I believe in front of the grand jury you indicated
12:52PM 18 this was the last place you stopped, correct?

12:52PM 19 A I think the last place was the park.

12:53PM 20 Q You're not sure?

12:53PM 21 A I believe the last place was the park.

12:53PM 22 MR. KENNEDY: Okay. Last place was the park, all
12:53PM 23 right. At this time, I move 9012-018 into evidence.

12:53PM 24 THE COURT: Any objection?

12:53PM 25 MR. AKINA: To foundation as to the two paths that are

12:53PM 1 marked.

12:53PM 2 THE COURT: I don't see two paths.

12:53PM 3 MR. AKINA: There is a dotted path and then a light

12:53PM 4 blue path and they overlap slightly.

12:53PM 5 MR. KENNEDY: Let me remove the circles, Your Honor.

12:53PM 6 It might be easier to see.

12:53PM 7 THE COURT: What is the relevance of this?

12:53PM 8 MR. KENNEDY: Time.

12:54PM 9 THE COURT: Did somebody walk this distance?

12:54PM 10 MR. KENNEDY: No, they didn't, and that's what I'm

12:54PM 11 trying to show.

12:54PM 12 THE COURT: I don't know what you are trying to show

12:54PM 13 quite honestly, Counsel.

12:54PM 14 MR. KENNEDY: I'm trying to show that none of these

12:54PM 15 stops --

12:54PM 16 THE COURT: I still don't see --

12:54PM 17 MR. KENNEDY: No one went to 940 Queen Street. That's

12:54PM 18 what I'm showing.

12:54PM 19 THE COURT: I'm talking, am I not?

12:54PM 20 MR. KENNEDY: You are, Your Honor.

12:54PM 21 THE COURT: I do not see two paths, Mr. Akina. I see

12:54PM 22 a blue path. Where is the second one?

12:54PM 23 MR. AKINA: Your Honor, the first path is comprised of

12:54PM 24 dark blue dots. The second path is comprised of a light blue

12:54PM 25 solid line. They overlap starting from the right-hand side and

12:54PM 1 then going towards the left, they diverge halfway.

12:54PM 2 THE COURT: I see them, thank you. The objection is

12:54PM 3 overruled. The exhibit may be admitted. You may publish.

12:54PM 4 (Exhibit 9012-018 was received in evidence.)

12:54PM 5 BY MR. KENNEDY:

12:54PM 6 Q And so on 9012-018, we can see the distance between this

12:55PM 7 location and Queen Street, correct?

12:55PM 8 A I'm sorry.

12:55PM 9 Q Specifically 940 Queen Street, correct?

12:55PM 10 A What about it?

12:55PM 11 Q I'm sorry?

12:55PM 12 A What was the question?

12:55PM 13 Q On this, you can see the distance between the two

12:55PM 14 locations, correct?

12:55PM 15 A I believe so.

12:55PM 16 Q All right. And so you were asked where this was in

12:55PM 17 relation to earlier.

12:55PM 18 The Fisherman's Wharf is quite a distance away, isn't

12:55PM 19 it?

12:55PM 20 A I'm not sure.

12:55PM 21 Q I thought you said it was towards the mountain side as

12:55PM 22 opposed to towards the water?

12:55PM 23 A I said quite a far distance. I don't know what you mean.

12:55PM 24 Q Numerous, numerous blocks, correct?

12:55PM 25 A From where --

12:55PM 1 Q From this location?

12:56PM 2 A Right.

12:56PM 3 Q Down this street across, across, across --

12:56PM 4 A Okay.

12:56PM 5 Q -- it's roughly a half hour walk one way?

12:56PM 6 A I'll take your word for it.

12:56PM 7 Q All right. Now, you mentioned something about Mr. Miller.

12:56PM 8 You said it's just his style, right?

12:56PM 9 A Uh --

12:56PM 10 Q Wasn't that your words earlier today, it's just his style?

12:56PM 11 A At what part?

12:56PM 12 Q The government was asking you whether you believed him

12:56PM 13 about the lawyer?

12:56PM 14 A Okay.

12:56PM 15 Q And you said it's just his style; you didn't really

12:56PM 16 believe anything that this man was telling you, right?

12:56PM 17 A Yeah. There is a lot that I didn't believe.

12:56PM 18 Q Okay. So were you aware you were asked about an

12:56PM 19 individual by the name of Preston Kimoto.

12:57PM 20 Do you recall the government asking you that?

12:57PM 21 A Yes, I do.

12:57PM 22 Q Were you aware that Mr. Miller was texting Preston Kimoto

12:57PM 23 at 5:37:07, "WTF, what the fuck, brah. Text me back or

12:57PM 24 something," while you were kidnapping.

12:57PM 25 Were you aware of that?

12:57PM 1 A I was not.

12:57PM 2 Q Were you aware that Kimoto got back to Miller and said, "I
12:57PM 3 was at the house. Left my phone in the truck. Hold on. She
12:57PM 4 just got home."

12:57PM 5 THE REPORTER: Sir, you're reading too fast.

12:57PM 6 BY MR. KENNEDY:

12:57PM 7 Q You're right. I apologize. Were you aware that
12:57PM 8 Mr. Kimoto was texting Miller back at 6:08:48: "I was at the
12:57PM 9 house and left my phone in the truck. Hold on. And she just
12:57PM 10 got home."

12:57PM 11 Were you aware of that?

12:57PM 12 A No, sir.

12:57PM 13 Q Were you aware that at 6:42:36, Kimoto texted Miller and
12:57PM 14 said, "Meet, give me 15 minutes."

12:58PM 15 Were you aware of that?

12:58PM 16 A I was not.

12:58PM 17 Q Were you aware that Miller then texted Kimoto back and
12:58PM 18 said, "K," for okay?

12:58PM 19 MR. AKINA: Objection as to cumulative. The witness
12:58PM 20 has already stated that he doesn't know Preston Kimoto.

12:58PM 21 BY MR. KENNEDY:

12:58PM 22 Q You were doing a kidnapping with this individual, right?

12:58PM 23 THE COURT: Sustained.

12:58PM 24 BY MR. KENNEDY:

12:58PM 25 Q Correct?

12:58PM 1 THE COURT: With Kimoto?

12:58PM 2 BY MR. KENNEDY:

12:58PM 3 Q You were doing a kidnapping with Mr. Miller, right?

12:58PM 4 A Yes.

12:58PM 5 Q You were doing this together, right?

12:58PM 6 A Yes.

12:58PM 7 Q Did you see him texting Mr. Kimoto?

12:58PM 8 A I don't know who he was texting.

12:58PM 9 Q You don't know. Did you see him meeting with Mr. Kimoto?

12:58PM 10 A I did not.

12:58PM 11 Q Did you see him calling Mr. Kimoto?

12:58PM 12 A I did not.

12:58PM 13 Q Did you see Mr. Kimoto arrive at Sheridan Park and speak

12:58PM 14 with Mr. Miller?

12:58PM 15 A I never seen Kimoto. I don't even know who that is.

12:59PM 16 Q But there was a period of time where you didn't see

12:59PM 17 Mr. Miller?

12:59PM 18 A But I don't know who Kimoto is. I couldn't pick him out

12:59PM 19 of a lineup.

12:59PM 20 Q So what I'm saying, sir, is there were periods of time

12:59PM 21 that you didn't see Mr. Miller, right?

12:59PM 22 A Yes.

12:59PM 23 Q You were shooting up heroin, right?

12:59PM 24 A Yes.

12:59PM 25 Q And you were shooting up heroin while the kidnapping was

12:59PM 1 happening, right?

12:59PM 2 A Yes.

12:59PM 3 Q Takes a little time to wrap it, put the needle in, right?

12:59PM 4 A Correct.

12:59PM 5 Q You're busy doing that, right?

12:59PM 6 A Yeah, at times.

12:59PM 7 Q You also have someone in the car that you got a hood over

12:59PM 8 and put duct tape, right?

12:59PM 9 A Correct.

12:59PM 10 Q And you have kidnapped him, right?

12:59PM 11 A Yes.

12:59PM 12 Q Okay, so Mr. Miller is also smoking heroin, right?

12:59PM 13 A At times.

12:59PM 14 Q At times throughout that, right?

12:59PM 15 A Correct.

12:59PM 16 Q You saw that, right?

12:59PM 17 A I did.

12:59PM 18 Q Okay. And so there were other times where he moved away,

12:59PM 19 right, where you didn't see him?

12:59PM 20 A Correct.

12:59PM 21 Q So you don't know if he was meeting with Mr. Kimoto,

01:00PM 22 right?

01:00PM 23 A No, I don't.

01:00PM 24 Q You don't know whether he was texting Mr. Kimoto, right?

01:00PM 25 A I don't know.

01:00PM 1 Q You don't know if he was calling Mr. Kimoto, right?

01:00PM 2 A No idea. He was gone.

01:00PM 3 Q So you just don't know is your testimony, right?

01:00PM 4 A That's correct.

01:00PM 5 Q You don't know who he called, right?

01:00PM 6 A I do not.

01:00PM 7 Q You don't know who he texted with, right?

01:00PM 8 A Yeah, I already said that.

01:00PM 9 Q And you don't know who he met with?

01:00PM 10 A I said that also.

01:00PM 11 Q So you don't know that later, by about 8:00, 8:14,

01:00PM 12 Mr. Kimoto and Mr. Miller are agreeing to meet at Sheridan

01:00PM 13 Park, do you?

01:00PM 14 MR. AKINA: Objection; cumulative.

01:00PM 15 THE COURT: Sustained.

01:00PM 16 BY MR. KENNEDY:

01:00PM 17 Q You don't know any of this, do you?

01:01PM 18 MR. AKINA: Objection; vague.

01:01PM 19 THE COURT: Sustained.

01:01PM 20 BY MR. KENNEDY:

01:01PM 21 Q So I want to talk to you a little bit about your plea

01:01PM 22 agreement and the government touched on that. Now, you were

01:01PM 23 charged with nine separate counts, correct?

01:01PM 24 A Sounds about right. I'm not sure.

01:01PM 25 Q Okay. And the counts that were dismissed were Count 1,

01:01PM 1 Count 5, Count 6, Count 7, Count 8, and Count 9, correct?

01:01PM 2 A Could be. I don't have it in front of me.

01:01PM 3 Q All right. In the plea agreement, it has some things that
01:02PM 4 the government agrees to do and -- if you would like to take a
01:02PM 5 look at it, I can show it to you.

01:02PM 6 Would that be helpful?

01:02PM 7 A What's the question.

01:02PM 8 Q Would it be helpful for you to see your plea agreement to
01:02PM 9 remember its details?

01:02PM 10 A Sure.

01:02PM 11 Q Can we pull up just for the witness what's been marked as
01:02PM 12 9012-004.

01:02PM 13 Does this look like a memorandum of your plea
01:02PM 14 agreement, sir?

01:02PM 15 A It does.

01:02PM 16 MR. KENNEDY: All right. I believe that would be in
01:02PM 17 the original one, Your Honor.

01:02PM 18 THE COURT: Got it, thanks.

01:03PM 19 BY MR. KENNEDY:

01:03PM 20 Q And I apologize for not telling you that. Okay. If we
01:03PM 21 move to page two of that agreement, you've told the jury that
01:03PM 22 you pled guilty to kidnapping and conspiracy to distribute and
01:03PM 23 possess with the intent to distribute methamphetamine, correct?

01:03PM 24 A Correct.

01:03PM 25 Q It looks like they are going to dismiss Counts 1, 5, 6, 7,

01:03PM 1 8, and 9 of that indictment, right?

01:03PM 2 A Correct.

01:03PM 3 Q And with respect to those charges, those would be

01:03PM 4 additional drug and gun charges, correct?

01:03PM 5 A Correct.

01:03PM 6 Q Now, before that happened, there was something that

01:04PM 7 happened in your case, and so the government filed with respect

01:04PM 8 to your drug charges.

01:04PM 9 You knew that the minimum penalty would be ten years

01:04PM 10 and the maximum would be life, correct?

01:04PM 11 A 851?

01:04PM 12 Q Before I get to the 851, the amount of drugs that you were

01:04PM 13 doing, the minimum is ten years and the maximum is life, right?

01:04PM 14 A I believe so.

01:04PM 15 Q Okay. They filed this thing called an 851, correct?

01:04PM 16 A Correct.

01:04PM 17 Q It's Title 21 United States Code 851. And what that does

01:04PM 18 is it takes the minimum from 10 years all the way up to 20,

01:04PM 19 correct?

01:04PM 20 A Around there. I'm not sure.

01:04PM 21 Q All right. And the government asked you about a

01:04PM 22 conviction that you had in this courthouse in 2004 regarding

01:05PM 23 drugs, correct?

01:05PM 24 A Yes.

01:05PM 25 Q And that's what they filed, right?

01:05PM 1 A Yes.

01:05PM 2 Q And in your agreement, if we go to the third page, you can
01:05PM 3 see that they are agreeing not to use that enhanced sentence
01:05PM 4 against you, correct?

01:05PM 5 A Yes.

01:05PM 6 Q So that was dismissed, right?

01:05PM 7 A I believe so.

01:05PM 8 Q And you didn't have to do 20?

01:05PM 9 A No.

01:05PM 10 Q Okay. But there is a last line that says the government
01:05PM 11 also agrees not to file a second special information pursuant
01:05PM 12 to 21 U.S.C. 851 which would result in an enhanced sentencing
01:05PM 13 based on a prior conviction on June 14, 2005 for promoting a
01:06PM 14 dangerous drug in the first degree, correct?

01:06PM 15 A Correct.

01:06PM 16 Q That's part of your agreement here as well, right?

01:06PM 17 A What do you mean?

01:06PM 18 Q Well, they are doing this for you, right?

01:06PM 19 A I signed this -- I don't know.

01:06PM 20 Q Well, if we go back to the second page, doesn't the
01:06PM 21 beginning of it begin with the agreement, right?

01:06PM 22 A Correct.

01:06PM 23 Q And it says what you're going to do, right?

01:06PM 24 A It says I'm entering into a plea.

01:06PM 25 Q You pled guilty to Count 1 and Count 2 of an information,

01:06PM 1 right?

01:06PM 2 A Um-hm.

01:06PM 3 Q Then it says what they are going to do, correct?

01:06PM 4 A Correct.

01:06PM 5 Q So the first thing was dismissed, Counts 1, 5, 6, 7, 8,

01:06PM 6 and 9, right?

01:06PM 7 A Correct.

01:06PM 8 Q If we move to the third page, they had filed this 851 that

01:07PM 9 took the minimum from 10 years to 20 years, right?

01:07PM 10 A I believe so.

01:07PM 11 Q Well, didn't it say that the government agrees to dismiss

01:07PM 12 and they did dismiss that, correct?

01:07PM 13 A Correct.

01:07PM 14 Q All right. Now, I'm going down to the last thing that

01:07PM 15 they agree.

01:07PM 16 A Okay.

01:07PM 17 Q They agreed not to file a second enhanced sentencing under

01:07PM 18 851 regarding your Hawaii state drug conviction on June 14th of

01:07PM 19 2005, correct?

01:07PM 20 A Correct.

01:07PM 21 Q That makes it mandatory life, no floor, no ability to do

01:07PM 22 anything other than life without, correct?

01:07PM 23 A Sounds pretty fair.

01:08PM 24 Q So that was your situation. You were going to do life

01:08PM 25 without; correct?

01:08PM 1 A Yeah, I don't know.

01:08PM 2 MR. AKINA: Objection, Your Honor. That misrepresents
01:08PM 3 what the plea agreement and the filings in that case were.

01:08PM 4 THE COURT: Sustained.

01:08PM 5 BY MR. KENNEDY:

01:08PM 6 Q If they had filed the second one, which they agreed not to
01:08PM 7 do, you were going to do life without.

01:08PM 8 That's part of their agreement, correct?

01:08PM 9 MR. AKINA: Objection, speculation.

01:08PM 10 THE COURT: Sustained.

01:08PM 11 BY MR. KENNEDY:

01:08PM 12 Q Didn't they promise you, the government also agrees not to
01:08PM 13 file a second special information, correct?

01:08PM 14 A Yeah, I don't know what I would have gotten. I'm sure
01:08PM 15 there is minimums -- there is mandatory minimums, and there is
01:08PM 16 the PSI. I think even the attorney general sent out a memo
01:08PM 17 saying that they are not even supposed to file an 851, but they
01:08PM 18 did it anyway.

01:09PM 19 Q So that's what you were facing, whether there is a memo
01:09PM 20 about it or not.

01:09PM 21 You know that's what you were looking at, weren't you?

01:09PM 22 A It's all right there.

01:09PM 23 MR. AKINA: Objection, speculation and vague.

01:09PM 24 BY MR. KENNEDY:

01:09PM 25 Q Now with respect to the guidelines --

01:09PM 1 THE COURT REPORTER: I didn't hear the ruling.

01:09PM 2 THE COURT: Are you asking me?

01:09PM 3 THE COURT REPORTER: Yes, Judge. I didn't hearing the

01:09PM 4 ruling on the objection.

01:09PM 5 THE COURT: The question was withdrawn. I take it as

01:09PM 6 the question was withdrawn. Counsel moved on.

01:09PM 7 BY MR. KENNEDY:

01:09PM 8 Q You mentioned these guidelines that are advisory on the

01:09PM 9 court, right?

01:09PM 10 A Yes.

01:09PM 11 Q You talked about getting, like, two points off, right?

01:09PM 12 A Yeah. I also got two points enhanced for the gun.

01:09PM 13 Q And so --

01:10PM 14 A So that's kind of broke even.

01:10PM 15 Q Weren't you looking at 292 to 365 months?

01:10PM 16 A I'm saying they dropped the gun, but I still got two

01:10PM 17 points enhancement for that.

01:10PM 18 Q So if you take a look at what's just marked for

01:10PM 19 identification purposes only, 9012-013, and if we go to page

01:10PM 20 34.

01:10PM 21 The guideline provisions was 292 to 365 months,

01:10PM 22 correct?

01:10PM 23 A Correct.

01:10PM 24 Q So 365 months is a little more than 30 years, right?

01:10PM 25 A I believe so.

01:10PM 1 Q And 292 months is a little less than 25 years, got it?

01:11PM 2 A I believe so.

01:11PM 3 Q What you ended up with was 188 months, right?

01:11PM 4 A That's correct.

01:11PM 5 Q And by testifying here today, you want to do a little

01:11PM 6 better, right?

01:11PM 7 A I hope so.

01:11PM 8 Q And so you're hoping to do from life to a little better,

01:11PM 9 right?

01:11PM 10 MR. AKINA: Objection; that's not his sentence.

01:11PM 11 MR. KENNEDY: I understand that.

01:11PM 12 THE COURT: Overruled. Go ahead.

01:11PM 13 THE WITNESS: Do a little better, yes.

01:11PM 14 BY MR. KENNEDY:

01:11PM 15 Q So.

01:11PM 16 A I agreed to, I think, testify truthful. That's part of my

01:11PM 17 plea agreement.

01:11PM 18 Q Now, I believe that you mentioned to the jury that there

01:12PM 19 was -- Mr. Miller came back after a conversation with someone

01:12PM 20 that you don't know -- don't know who he was talking to, and

01:12PM 21 said Mr. Miller said we should get rid of him.

01:12PM 22 Do you recall that?

01:12PM 23 A That's not exactly how it went.

01:12PM 24 Q Well, didn't you, on October 10th of 2018, testify under

01:12PM 25 oath to the grand jury?

01:12PM 1 A Yes, getting rid of him was a discussion. And then he --
01:12PM 2 we were trying to figure out what we are going to do, and then,
01:12PM 3 like I said, he went numb, made a phone call. That's when he
01:12PM 4 came back with the understanding that we are going to just take
01:13PM 5 him back.
01:13PM 6 Q Didn't you testify in the grand jury that that happened
01:13PM 7 after the phone call, sir?
01:13PM 8 A I'm not sure.
01:13PM 9 Q Take a look at page 2305 and 2319 of 7350.
01:13PM 10 A Because it wouldn't even make any sense.
01:13PM 11 Q Take a look at line 2 and then read down to line 24, just
01:13PM 12 to yourself.
01:13PM 13 THE COURT: What's page 2305?
01:13PM 14 MR. KENNEDY: I'm sorry, 7350, page 23, Your Honor.
01:13PM 15 Exhibit 7350, and it's page 23 line 02 to line 19.
01:13PM 16 THE WITNESS: Yeah, it says a discussion before --
01:13PM 17 BY MR. KENNEDY:
01:13PM 18 Q Before you -- just read it to yourself, sir, and then I'll
01:14PM 19 ask you some questions.
01:14PM 20 A Okay.
01:14PM 21 Q So there was a discussion after he came back, right?
01:14PM 22 A No. It says it was before.
01:14PM 23 Q Okay. So there was a discussion before he came back,
01:14PM 24 right?
01:14PM 25 A Yeah. There was discussion, and then he went and used the

01:14PM 1 phone, and then that's when he came back and we decided we were
01:14PM 2 going to take him back.

01:14PM 3 Q Okay. So when -- the discussion was whether you were
01:14PM 4 going to get rid of him, right?

01:14PM 5 A Yes.

01:14PM 6 Q And so you mentioned you don't know a Preston Kimoto,
01:14PM 7 right?

01:14PM 8 A Yes.

01:14PM 9 Q And you don't know of any meeting with a Preston Kimoto,
01:14PM 10 right?

01:15PM 11 A Correct.

01:15PM 12 Q So before that, you had a discussion about getting rid of
01:15PM 13 him and you were asked what getting rid of him meant, right?

01:15PM 14 A Correct.

01:15PM 15 Q And that was, you were pretty sure it meant to kill him
01:15PM 16 and get rid of him, right?

01:15PM 17 A Correct.

01:15PM 18 Q But then you chose to take him back, right?

01:15PM 19 A Yeah, because he went and made the phone call and came
01:15PM 20 back, and that's when we decided to take him back.

01:15PM 21 Q Okay. Did you see him make a phone call?

01:15PM 22 A No. I think he said he was going to go call. He told me
01:15PM 23 he was going to go call.

01:15PM 24 Q Did you see him make a phone call?

01:15PM 25 A No.

01:15PM 1 Q So you don't know if he met with someone who met up with

01:15PM 2 him there?

01:15PM 3 A Yeah, I'm not sure.

01:15PM 4 Q Okay. So now, at that point, you bring him back, correct?

01:15PM 5 A Correct.

01:15PM 6 Q All right. Now I want to move to an exhibit that is in

01:15PM 7 the first supplement, 8010-008.

01:16PM 8 Do you recognize the phone number 808 -- up at the

01:16PM 9 top, sir?

01:16PM 10 A I don't.

01:16PM 11 Q Do you recognize it as your phone?

01:16PM 12 A Honestly, I couldn't tell you what it was.

01:16PM 13 Q Okay. Why don't we blow up the first page.

01:16PM 14 Do you recognize the number as your phone?

01:16PM 15 A I don't.

01:16PM 16 Q You don't recognize the 808?

01:16PM 17 A Because it's not like you ever really give out your

01:16PM 18 phone -- you know what I mean? You just call somebody and they

01:16PM 19 get your number. I don't think I even had that phone for too

01:16PM 20 long, if it was mine.

01:16PM 21 Q Let's take a look at the -- if you go -- if we scroll

01:17PM 22 through the messages.

01:17PM 23 Do you recognize it as the phone that was seized when

01:17PM 24 you were arrested?

01:17PM 25 A I don't know.

01:17PM 1 Q Okay. Well, let's keep scrolling through.

01:17PM 2 Do you recognize it as messages that you were sending?

01:18PM 3 A No.

01:18PM 4 Q Okay. Let's keep scrolling through.

01:18PM 5 Do you recognize any of the messages from this phone?

01:18PM 6 A Not yet.

01:18PM 7 Q Okay. Tell you what, sir, since you don't recognize them,

01:18PM 8 and I don't want to take the jury's time, I'll find the

01:18PM 9 document that might help you.

01:18PM 10 Let's move on to a different chapter since we're

01:18PM 11 getting close to 1:20 and I don't want to sit here and scroll

01:18PM 12 through here.

01:18PM 13 Let me ask you this: You don't remember the phone

01:18PM 14 that you had when you were arrested, right?

01:18PM 15 A That is correct.

01:19PM 16 Q Okay. And if there is a document that shows the number,

01:19PM 17 that might help you remember?

01:19PM 18 A As I said I couldn't tell you. If you could release me

01:19PM 19 today, I couldn't tell you. I don't know the number.

01:19PM 20 Q Well, we will take a look if we can find that for you and

01:19PM 21 help you.

01:19PM 22 So now on August 8, 2018, you were arrested, right?

01:19PM 23 A Yes.

01:19PM 24 Q Now, you got a phone call from Wayne Miller on August 1st,

01:19PM 25 correct?

01:19PM 1 A Correct.

01:19PM 2 Q And so he called you about a drug transaction, right?

01:19PM 3 A I'm not sure what it was about.

01:19PM 4 Q And you learned that was when he had been arrested himself

01:19PM 5 and he made a phone call to you?

01:19PM 6 A Yeah. I wasn't aware that he got arrested.

01:19PM 7 Q Right, because he was calling you with agents there

01:20PM 8 listening, right?

01:20PM 9 A Yeah. I found that out afterwards.

01:20PM 10 Q Right. And then there was a series of text messages and

01:20PM 11 then you were arrested eight days later?

01:20PM 12 A Correct.

01:20PM 13 Q So there was a traffic stop, right?

01:20PM 14 A Correct.

01:20PM 15 Q It was over on the Nimitz Highway?

01:20PM 16 A Yes.

01:20PM 17 Q And you were arrested for possession of methamphetamine to

01:20PM 18 sell, right?

01:20PM 19 A Yes.

01:20PM 20 Q And you had in the glove compartment a 40 caliber Smith &

01:20PM 21 Wesson handgun, right?

01:20PM 22 A Yes.

01:20PM 23 Q Loaded with nine rounds, right?

01:20PM 24 A I believe so.

01:20PM 25 Q No ammunition in the chamber, but loaded?

01:20PM 1 A Sounds fair to say, yeah.

01:20PM 2 Q And you had a little decorative strip on each side of that

01:20PM 3 40, right?

01:20PM 4 A Yes.

01:20PM 5 Q And if you peel away that strip, then you could see that

01:20PM 6 the serial number had been taken off the gun, right?

01:21PM 7 A Yes.

01:21PM 8 Q But the decorative strip helped, hid that, didn't it?

01:21PM 9 A Sure.

01:21PM 10 Q On both sides, right. And so on the left side of the

01:21PM 11 pistol slide, the serial number was obliterated, right?

01:21PM 12 A Yeah.

01:21PM 13 Q Okay. If we could look at 9012-012-0038A, which is in the

01:21PM 14 8th supplement.

01:21PM 15 Do you recognize what's shown?

01:21PM 16 A Yes.

01:21PM 17 Q I'm sorry. Looks like it's -- can we go back to -- okay.

01:21PM 18 Do you see what's marked as 9012-012A?

01:21PM 19 A Me?

01:21PM 20 Q Yes.

01:21PM 21 A Yes.

01:21PM 22 MR. KENNEDY: And Your Honor, it would be 34 pages

01:22PM 23 into 9012, but you we marked it separately to just admit this

01:22PM 24 single page.

01:22PM 25 THE COURT: I'll let you know when I find it because

01:22PM 1 it's not on the 8th supplemental list.

01:22PM 2 MR. KENNEDY: Oh, it's not? My apologies, Your Honor,

01:22PM 3 it's on the 9th. That's on me.

01:22PM 4 THE COURT: I've got it now. And you're offering

01:22PM 5 what?

01:22PM 6 BY MR. KENNEDY:

01:22PM 7 Q Do you recognize it, sir?

01:22PM 8 A Yes.

01:22PM 9 Q Is that the gun that was seized?

01:22PM 10 A Yes.

01:22PM 11 MR. KENNEDY: All right. I'd offer 9012-012A into

01:22PM 12 evidence.

01:22PM 13 MR. AKINA: No objection.

01:22PM 14 THE COURT: Is this a one-page document?

01:22PM 15 MR. KENNEDY: Yes. We pulled it out to make it

01:22PM 16 9012-012A.

01:22PM 17 THE COURT: I see. I think I understand here.

01:23PM 18 Without objection, 9012-012 Alpha is admitted.

01:23PM 19 (Exhibit 9012-012 was received in evidence.)

01:23PM 20 MR. KENNEDY: Can we pull up 9012-012-0038A.

01:23PM 21 THE COURT: I'm sorry. Where would I find this one?

01:23PM 22 MR. KENNEDY: It should be in supplemental number

01:23PM 23 nine.

01:23PM 24 THE COURT: You would think, but it's not.

01:23PM 25 MR. KENNEDY: I'm going to check and make certain,

01:23PM 1 Your Honor. I have them here. Oh, it's a B. It's 9012-012B.

01:24PM 2 THE COURT: I've got it now.

01:24PM 3 BY MR. KENNEDY:

01:24PM 4 Q All right. Do you recognize what's shown in 9012-012B,
01:24PM 5 sir?

01:24PM 6 A Yes, I do.

01:24PM 7 MR. KENNEDY: I would move 9012-012B into evidence.

01:24PM 8 MR. AKINA: I think he's going to get there, but there
01:24PM 9 is no foundation.

01:24PM 10 THE COURT: There isn't.

01:24PM 11 BY MR. KENNEDY:

01:24PM 12 Q Sir, what is it?

01:24PM 13 A A gun and drugs.

01:24PM 14 Q Is it inside the glove compartment?

01:24PM 15 A It is.

01:24PM 16 Q Of the car you were driving when you were arrested?

01:24PM 17 A It is.

01:24PM 18 MR. KENNEDY: At this time, I'd move 9012-012B into
01:24PM 19 evidence.

01:24PM 20 MR. AKINA: No objection.

01:24PM 21 THE COURT: Without objection, that document is
01:24PM 22 admitted, 9012-012B.

01:24PM 23 (Exhibit 9012-012B was received in evidence.)

01:24PM 24 MR. KENNEDY: May we publish.

01:24PM 25 THE COURT: Yes.

01:24PM 1 BY MR. KENNEDY:

01:24PM 2 Q So when you were arrested, this is where this particular
01:25PM 3 40-caliber Smith & Wesson was in the glove compartment of the
01:25PM 4 car, correct?

01:25PM 5 A Yes.

01:25PM 6 Q You were a passenger?

01:25PM 7 A Yes.

01:25PM 8 Q And so it was right in front of you, right?

01:25PM 9 A Correct.

01:25PM 10 Q If we'd publish 9012-012A, this is then that firearm and a
01:25PM 11 series of photographs?

01:25PM 12 A Yes.

01:25PM 13 Q The decorative strip that I was referring to is in that
01:25PM 14 circle.

01:25PM 15 You can see it, correct?

01:25PM 16 A Yes.

01:25PM 17 Q And so it was on each side of the firearm, correct?

01:25PM 18 A Correct.

01:25PM 19 Q And that would hide the fact that the serial number was
01:25PM 20 obliterated, correct?

01:25PM 21 A It appears so. I don't think that was the reason, but...

01:25PM 22 Q All right. If we could pull up 9012-012, I believe it
01:26PM 23 would be C.

01:26PM 24 Do you recognize the ammunition being photographed
01:26PM 25 from your firearm?

01:26PM 1 A Yes.

01:26PM 2 MR. KENNEDY: At this time, I'd move 9012-012C into
01:26PM 3 evidence.

01:26PM 4 THE COURT: Any objection, counsel?

01:26PM 5 MR. AKINA: No objection.

01:26PM 6 THE COURT: 9012-012C is admitted without objection.
01:26PM 7 (Exhibit 9012-012C was received in evidence.)

01:26PM 8 MR. KENNEDY: May I publish.

01:26PM 9 THE COURT: Yes, you may.

01:26PM 10 BY MR. KENNEDY:

01:26PM 11 Q So this was the ammunition which was inside the 40-caliber
01:26PM 12 Smith & Wesson, right?

01:26PM 13 A I believe so.

01:26PM 14 Q In the magazine. If we moved to 9012-012D, and this was
01:27PM 15 the magazine which held the nine rounds that we just saw?

01:27PM 16 A Looks like it.

01:27PM 17 Q Now, there was also a search of your house done that day,
01:27PM 18 correct?

01:27PM 19 A Yes.

01:27PM 20 Q Or soon thereafter, right?

01:27PM 21 A Correct.

01:27PM 22 Q And what was the location of that place which you were
01:27PM 23 staying?

01:27PM 24 A I'm not quite sure.

01:27PM 25 Q You're not sure. Okay. If we pull up Exhibit 9012-012E.

01:27PM 1 Do you recognize what is depicted in 9012-012E?

01:27PM 2 A I do.

01:27PM 3 Q Is it ammunition, 40-caliber located at the house that you
01:27PM 4 were staying at when you were arrested and during the traffic
01:28PM 5 stop?

01:28PM 6 A Yes, it is.

01:28PM 7 MR. KENNEDY: At this time, I'd move 9012-012E into
01:28PM 8 evidence.

01:28PM 9 THE COURT: Any objection?

01:28PM 10 MR. AKINA: No objection.

01:28PM 11 THE COURT: 9012-012E is admitted without objection.
01:28PM 12 (Exhibit 9012-012E was received in evidence.)

01:28PM 13 MR. KENNEDY: May I publish?

01:28PM 14 THE COURT: You may.

01:28PM 15 BY MR. KENNEDY:

01:28PM 16 Q This was the ammunition that you had at the home, correct?

01:28PM 17 A Correct.

01:28PM 18 Q It's Winchester, correct, 40-caliber?

01:28PM 19 A Correct.

01:28PM 20 Q And American Eagle, right?

01:28PM 21 A Sure.

01:28PM 22 Q And these are photographs of it, right?

01:28PM 23 A Yes.

01:28PM 24 Q Now, we talked about the fact that you received a

01:28PM 25 hundred -- back in 2005 when you were convicted, back then in

01:29PM 1 federal court, you received 188 months sentence, right?

01:29PM 2 A Correct.

01:29PM 3 Q And then it was reduced down to 144 months during that

01:29PM 4 term, which allowed you to get out in 2013 to the halfway

01:29PM 5 house, correct?

01:29PM 6 A Correct.

01:29PM 7 Q So right now, you are doing 188 months, right?

01:29PM 8 A Correct.

01:29PM 9 Q And in between, you were on supervised release, right?

01:29PM 10 A Yes, it was.

01:29PM 11 Q And all this drug dealing, drug use, and criminal activity

01:29PM 12 was while you were under supervised release of the court,

01:29PM 13 right?

01:29PM 14 A Yes, it was.

01:29PM 15 Q So you were getting away with committing crimes while you

01:29PM 16 were under the supervision of the court, right?

01:29PM 17 A Well, I got caught.

01:29PM 18 Q You didn't get caught until --

01:29PM 19 A I didn't get away, I don't think.

01:29PM 20 Q -- until August 8th of 2018, right?

01:30PM 21 A Correct.

01:30PM 22 Q And prior to that, with Mr. Wayne Miller, you were flying

01:30PM 23 back to Las Vegas to get drugs from a guy by the name of Rusty

01:30PM 24 Largo, (phonetic) weren't you?

01:30PM 25 A Something like that.

01:30PM 1 Q Yeah. And so that was going on in 2018 as well, correct?

01:30PM 2 A I don't know the exact dates, but yeah.

01:30PM 3 MR. KENNEDY: Your Honor, before we move to another
01:30PM 4 spot, is this a good spot to stop for the day?

01:30PM 5 THE COURT: It is. It is. Thank you. So let's go
01:30PM 6 ahead and break for the trial day then at that point. And we
01:30PM 7 will resume with Mr. Kennedy's cross of Mr. Ortiz tomorrow
01:30PM 8 morning. As we go to break, I'm reminding our jurors to please
01:30PM 9 once again to please refrain from discussing the substance of
01:30PM 10 this case with anyone, including each other, until I advise you
01:30PM 11 otherwise; do not access any media or other accounts of this
01:30PM 12 case that may be out there; and then finally, please do not
01:30PM 13 conduct any independent investigation into the facts,
01:31PM 14 circumstances, or persons involved.

01:31PM 15 So we will start just as we did this morning at 8:30
01:31PM 16 tomorrow.

01:31PM 17 (Proceedings were concluded at 1:31 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2 I, Gloria T. Bediamol, Official Court Reporter, United
3 States District Court, District of Hawaii, do hereby certify
4 that pursuant to 28 U.S.C. §753 the foregoing is a complete,
5 true, and correct transcript from the stenographically reported
6 proceedings held in the above-entitled matter and that the
7 transcript page format is in conformance with the regulations
8 of the Judicial Conference of the United States.

9

10 DATED at Honolulu, Hawaii, June 3, 2024.

11

12

13 /s/ Gloria T. Bediamol

14 GLORIA T. BEDIAMOL.

15 RMR, CRR, FCRR

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